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THE

STATUTES AT LARGE

OF

SOUTH CAROLINA;

EDITED, UNDER AUTHORITY OF THE LEGISLATURE,

BY

THOMAS COOPER, M. D.—L. L. D.

STANFORD LIBRARY

VOLUME FIRST,

CONTAINING ACTS, RECORDS, AND DOCUMENTS OF A

CONSTITUTIONAL CHARACTER,

ARRANGED CHRONOLOGICALLY.

COLUMBIA, S. C.
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1836.

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COMMUNICATION

To His Excellency George M'Duffie, Governor of South-Carolina:

Sir—Herewith I transmit the collection of materials meant to form the first volume of the Statutes at Large of South-Carolina. They can easily be arranged for the Printer under my own superintendence and inspection, when the plan of the volume is finally settled by a Committee of the Legislature, and when it is finally decided whether any and what parts of the proposed materials shall be excluded from the volume. They consist of

First, The acts, documents and proceedings of a *constitutional* character, all of which the Editor considers as expedient to be adopted. The reasons of his opinion are contained in the preface to the work herewith transmitted.

Secondly, The *legislative* acts of Assembly, as adopted and arranged by Judge Grimke, in his 4th edition of the public Laws, from the year 1694 to 1740. From the condition of the very early acts of Assembly in MS. and the want of present interest in the subjects of them, the Editor has not thought fit to commence earlier.* All the English Statutes declared of force by act of Assembly, or any other reason, or under any other authority, are inserted with the specific reasons for their insertion.

Thirdly, The sections and clauses of acts which Judge Grimke has rejected as obsolete or repealed: these have been copied from the original acts, because it appeared to the Editor desirable that the laws should be presented unmutilated by any private authority; and for the reasons also assigned in his preface. Whatever order shall be finally taken on this part of the collection, the Editor will comply with, and if this supplement to the hitherto mutilated acts as published shall be adopted, the Editor will take care of their due and orderly insertion.

Fourthly, The notes and references of the Editor to such acts as seemed to require illustration and comment. He has inserted to each act, where they were called for, a reference to every other act subsequently passed, relating in whole or in part to the same *subject matter:* a reference also to every *decision* thereon, throughout the twenty two volumes of South-Carolina Reports.

The plan of this work cannot be finally and satisfactorily adjusted, till it has been submitted to the inspection of His Excellency the Governor, and through him to the Legislature. When the plan is settled, the Editor will proceed therein with as much despatch as is consistent with accuracy.

I have the honor to be, respectfully, sir,

Your obedient servant,

THOMAS COOPER.

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* But see the Report of the Judiciary Committee of December 9, 1835, unanimously adopted by the Legislature, inserted at the end of this Preface, directing the present edition to commence with the laws of 1682.

PREFACE.

The legislative records of South-Carolina commence in 1682: from that time to the present, no plan sanctioned by public authority has been formed and executed to collect, revise or digest our written Laws. The acts of Assembly have continued to increase by annual additions, preserved chiefly in loose and fugitive publications, until it has become extremely difficult to make a collection of our laws that shall form the basis of any future revision, condensation, or digest. Of these laws, enacted during a period of more than 150 years, many have been repealed, many have become obsolete, others have been at various times altered and modified, many have been passed without a due reference to former enactments, many British Statutes have been adopted by formal and direct reference, others have been made of force indirectly and as a class of statutory provisions; until the Statute Law of South-Carolina has become a confused mass of legislation, difficult to be collected, and still more difficult to be clearly understood by the citizens who are required to obey its regulations. Revisal, condensation, amalgamation, and something in the form of an intelligible digest, have become absolutely necessary; and every year of neglect adds to the labor and the difficulty of performing this indispensable duty.

It is manifest, that before any step of this kind can be taken for the future, it is necessary to have under our view the whole ground occupied by past legislation. We must know, precisely, what has been done, why it has been done, when it has been done, and how it has been done, before we can go to work to ascertain with reasonable certainty what remains to be done. I have endeavored to supply this want by collecting in a chronological series the whole mass of our public legislation, accompanied with such notes and references, as may tend to elucidate what has been, and facilitate what remains to be accomplished.

A collection of the laws of the Province of South-Carolina was made by Chief Justice Trott, about the year 1736. It was in folio. It comprised all the acts of Assembly then in force, together with the titles of such other acts as had been passed from the first settlement of the country. Judge Trott, a learned and labourious Jurist, and during many years a person of great influence in South-Carolina, died 21st January, 1740, aged 77 years.

Judge Grimke, in the year 1790, published a collection of the laws of a public nature, then deemed in force: with the titles of all the acts passed

from the first establishment of civil government in the Province. His collection ends with the Constitution of June 3d, 1790. Judge Grimke has excluded all the acts of Assembly that have been repealed, that have expired, or that, under his view of the subject, have become obsolete. These cases of exclusion he has adopted, with a latitude that I dare not follow, and which sometimes has been exercised too loosely in his work. It by no means, therefore, supplied the great desideratum of the Bench and of the Bar—a work that might be fairly called *the Statutes at large.*

The digest of the Laws published by Judge Brevard, in 3 volumes, 1814, exhibits, perhaps, more sound judgment, as well as more laborious research, than the collection by Judge Grimke: but as Judge Brevard's compilation was intended for a manual only, it was not calculated to satisfy the wants of the profession or of the public. From that time to the present, upwards of 20 years, acts of Assembly have been annually heaped on each other, without any adequate means of cautious reference to what has been done precedently. Hence, I have carefully considered the wants of the profession and of the public in this respect, and have determined to submit to the Legislature, through the Governor of the State, a publication that shall fulfil the idea of *the Statutes at large;* and which shall serve as an adequate basis or platform for future operations by the Legislature, and more satisfactory decisions by the Courts.

The resolution of the Legislature, December, 1834, under which I act, runs as follows:

"The Committee on the Judiciary, to which was referred the resolution to inquire into the expediency of procuring to be compiled and published the *Statute Law* of this State, now of force, with a digested index thereto—and also that part of the Governor's Message on the same subject—having had the same under consideration, respectfully recommend the adoption of the following resolution, viz:

"*Resolved*, That His Excellency the Governor be authorized and requested to employ some fit and competent person, to compile under his direction the *Statute Law* of this State, with a digested index thereto; that he be requested to communicate at the next Session of the Legislature the progress of this work, and the compensation he may deem just and equitable should be paid to the person thus employed: and that the Governor be further authorized to pay from time to time such sum or sums as upon inspection of the work he may deem equivalent to the labor actually bestowed on the same by the person thus employed."

In considering this resolution, I have thought myself authorized to put such a construction upon it, as would best answer the object intended, and comport with the constitutional power of the Legislature.

I am required to compile an edition of the *Statute Law* of South-Carolina: is it to be an imperfect and mutilated edition of our public Law, or one that will answer the description of the "Statutes at large?" I have preferred the latter: *because*, it is better to insert somewhat too much than somewhat too little: *because*, the reasons for a present law, are often derived from, and the law itself elucidated by, the imperfections it is

meant to supercede : *because*, we cannot understand the former defects, or the progressive improvement of our legislation, unless by a full series of our public Laws placing it under our view : *because*, rights become vested during the continuance of Laws subsequently repealed, which the courts cannot decide on, without reference to the repealed statute, under which they originated : *because*, present legislation is enlightened by the reasons that have occasioned former enactments to be rejected. These considerations appeared to me sufficient to justify, in a national work, the insertion of Laws of a public nature, that have been repealed. It is not a manual that is *at present* in question ; but the body of the Statute law of the State. Nor can any manual worth looking at, be compiled, unless it be based on this full and complete collection of the Statutes at large.

I have not deemed myself authorized under this resolution to decide what part of our statute law is of force, and what is not of force—what is obsolete and what is yet valid. Because, although ministerial authority may be delegated, legislative authority cannot. I should hold myself sadly wanting in due respect to the Legislature, if I were to conceive myself at liberty, under this resolution, directly or indirectly to abrogate what they have thought fit heretofore to enact; or to declare any thing as law under my own authority. This is a power too great to be intrusted to any individual, *even if the constitution did not forbid* it. That instrument gives the power of repealing a law, that is the power of declaring it is not in force, to the legislature alone. The 7th article of our Constitution enacts, *That all laws of force in this State at the passing of this Constitution, shall so continue until altered or repealed by the Legislature, except where they are temporary, in which case, they shall expire at the times respectively limited for their duration, if not continued by the Legislature.* Moreover, it was solemnly decided in 1814, *Cohen* v. *Hoff*, 2 Tread. Con. Rep. 657, that the Governor has no discretionary power of appointment to the exercise of judicial functions : he must confine himself in this respect strictly within the constitutional limitations. Farther, in 1817, when the trial by battle was demanded on an appeal of murder, in the case of Abraham Thornton, in the court of King's bench, the Judges were of opinion that they had not the power of declaring this barbarous mode of decision obsolete, either from disuse or its manifest absurdity : they determined that it must be abrogated, not by them but by the Legislature : an act of parliament was accordingly passed, 59 Geo. 3, ch. 46.

An act of Parliament cannot be repealed by *non user*, *White qui tam* v. *Bott*, 2 Term. Rep. 275. Such an opinion may have prevailed at different times in England, but it is unfounded, and has no warrant in our law.—Dwarris on Statutes, p. 672. The French law (Discours preliminaire du premier projet du Code Civil,) acknowledges that a law may become obsolete from desuetude by universal consent, but expressly declines laying down any rule or formal provision on the subject, from the danger that might thence arise.

In the face of these authorities, how can I presume to decide, by omitting its insertion, what law is obsolete or not—what law is in force or not—unless where legislative authority has expressly defined the line of my duty in the case before me? I may (as I shall do) suggest that a law is obsolete, but I cannot leave it out, if it bears on the face of it a public character.

If it be a good rule to be cautious in committing discretionary authority, it is a still better rule to be cautious in assuming it; and I hope to be forgiven if in my own case I feel the necessity of this caution. I have therefore thought fit, on mature consideration, to submit to his Excellency the Governor the following plan of publication, viz:

To insert first, all the laws of a CONSTITUTIONAL character, relating to South-Carolina as a Province, and as a State.

I have inserted Magna Charta, the Petition of Right to Charles 1st, the Habeas Corpus Act, and the Bill of Rights; partly under the specific enactments, and partly under the authority of the following section of the Act of Assembly of 1712. (Grimke's Public Laws, p. 98) viz:

"SEC. 3. *All the Statutes of the Kingdom of England, relating to the Allegiance of the people to her present Majesty Queen Anne, and her lawful successors, and the several public oaths, and requiring the tests to be subscribed by the people, and also all such Statutes in the Kingdom of England as declare* THE RIGHTS AND LIBERTIES OF THE SUBJECT, *and enact the better securing the same; and so much of the said Statutes as relates to the above mentioned particulars of the allegiance of the people to their Sovereign, the public oaths, and subscribing the Tests required of them, and* THE DECLARING AND SECURING THE RIGHTS AND LIBERTIES OF THE SUBJECT, *are hereby enacted and declared to extend to, and to be of full force in this province, as if particularly enumerated in this act.*"

It is true, that much of these ancient English documents are now in fact obsolete; the provisions therein enacted have done their duty, and they are in great part superceded; but as the Legislature of South Carolina has thought fit expressly to enact and adopt them, and has not yet seen fit to reject or repeal them, I am bound to insert them; nor can I exercise a discretionary power of rejection in direct defiance of an existing law of the land.

All the Statutes at large of England, in all their editions, commence with the amended Magna Charta of Henry III., as re-enacted and confirmed by Edward I. This was the case with Joseph Keble's edition, adopted by the Provincial Assembly, Dec. 1712. The Great Charter of King John, the charter, by way of eminence, of our Historians, was not then known to the public by any authoritative edition. It has been made known since by the publications principally of Rapin the Historian, Sir William Blackstone, the engraved fac simile of the Cotton library manu script, and the last magnificent edition of the English Statutes at large, recently published by Mr. Cooper, under the authority of the Parliamentary Committee. From these sources now before me, I have thought it

desirable to republish it in my first volume, under the authority of the 3d Section of the Act of 1712, and the discussion in the 1st vol. of Bay's Rep. 384 et seq. These documents have undoubtedly suggested our American idea of written Constitutions. *The Colonial Charters* laying at the foundation of our Laws, I have deemed it necessary to republish with Chief Justice Trott's useful remarks. The *Constitution of John Locke*, though not formally adopted by the Legislature, I was compelled to republish, because the language employed in some of our early acts of Assembly would be unintelligible without a reference to that document.

All the other acts, constitutions, and illustrations of the legislative proceedings of the State, inserted under the class of CONSTITUTIONAL documents, are well worth preserving as parts of our constitutional and legislative proceedings; and unless contained in this publication, they would in a few years be lost, no more to be collected or remembered.

The second part of this work will consist of our LEGISLATIVE enactments, or public laws properly so called; repealed and unrepealed, obsolete or otherwise; with notes and references designating such laws or parts of laws as may be repealed, or considered as obsolete in a popular sense, although not so declared by any *legislative* authority; the only existing authority, that has the right to expunge them: an authority, which in my opinion the Legislature cannot delegate to any man or set of men. It is the high and exclusive prerogative of our Legislature; to be exercised by them and by them alone.

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An act to provide for the calling of a Convention of the People of this State, passed 26 Oct. 1832. (See appendix p. 1 to the Pamphlet Acts of 1834.) The Convention met Nov. 19, 1832.

An Ordinance to Nullify certain acts of the Congress of the United States, purporting to be Laws laying duties and Imposts on the importation of foreign commodities. (See Journal of the Convention, p. 47, 24 Nov. 1832); with the report of the Select Committee, accompanying that Ordinance. (See Journal of the Convention, p. 27) 24 Nov. 1832.

An Address to the People of South-Carolina, by their Delegates in Convention, 24 Nov. 1832. (See p. 64 of the Journal of the Convention.)

The Address of the Convention to the People of the United States, 24 Nov. 1832: (See p. 68 of the Journal of the Convention.)

An Act to carry into effect, in part, AN ORDINANCE to nullify certain Acts of the Congress of the United States, purporting to be Laws laying duties on the importation of foreign commodities, passed in Convention of this State, at Columbia, on the twenty-fourth day of November, in the year of our Lord 1832. Passed 20th December, 1832. (See Pamphlet Laws for 1832, page 15.

An Act concerning the Oath required by the Ordinance passed in Convention, at Columbia, 24th day of November, 1832. Passed 20th day of Dec. 1832. (See Pamphlet Laws for 1832, p. 22.)

Second Session of the Convention, March 11, 1833.

Report of the Committee, to whom was referred the communication

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* See the Collection of Laws of the United States, relating to public Lands: collected under a resolution of the House of Representatives, 1st March, 1826, and an order dated 19th Feb. 1827; published by Gales & Seaton, 1828.

of the honorable B. W. Leigh, Commissioner from the State of Virginia, and all other matters connected with the subject, and the course which should be pursued by the Convention at the present important crisis of our political affairs. Adopted 16th March, 1833. (See Journal of the Convention, p. 106.)

The Ordinance passed 15 March, 1833, on occasion of the Compromise Act of the Congress of the United States. (Journal of the Convention, p. 110.)

Report of the Committee, to whom was referred the Act of the Congress of the United States, entitled "An Act further to provide for the collection of duties on Imports." Adopted March 18th, 1833. (See Journal of the Convention, page 121.)

An Ordinance to Nullify an Act of the Congress of the United States, entitled *An Act further to provide for the Collection of Duties on Imports*, commonly called the FORCE BILL, 18 March, 1833. (See Journal of the Convention, p. 129.)

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Documents, References, and Acts of Assembly relating to the BOUNDARY LINE.

Judge Brevard's Observations on our Legislative history; with additions.

Of the preceding catalogue of acts, statutes, ordinances and documents, the greater part must necessarily be inserted. Concerning some of them, doubts may arise whether they might not be omitted in this edition, altho' (as the Editor conceives) there is indisputable legislative authority for the insertion of every one of them: and as this work is not likely to be undertaken again for many years to come, it seems far better to admit a few pages more than are absolutely necessary, rather than leave our legislative history incomplete. Nor will the debateable matter now offered and proposed for insertion, occupy more than a third part of the volume at the utmost. When we see the long continued trouble, and the immense expense dedicated by the British Legislature to a work of the same kind, with the most decided approbation of the British public, we can hardly have any reasonable objections to incur a five hundredth part of that expense, in order that we may leave nothing to be desired by a man of legal research, whose professional duties compel him to resort to our collection.

But there is no need on the present occasion to appeal to the liberal example of the British Government in preserving the documents of their legislative history, in the late edition of their Statutes at large; for, on the 7th day of December, 1827, our SENATE

Resolved, That it is desirable and expedient to procure from the Office of the Colonial Department in England, copies of such papers and docu-

ments as relate to the history of this State; beginning with the Charter of Charles 2d, in the year 1662. [As the present editor has also done.]

Resolved, That his Excellency the Governor be, and he is hereby requested to take measures for procuring a List of all such papers; also, for ascertaining whether it be practicable to obtain copies of the same, and what will be the probable amount that may be required to pay for them.

Ordered, That it be sent to the House of Representatives for concurrence.

By order of the Senate,

JOB JOHNSTON, C. S.

In the House of Representatives, Dec. 7, 1827.

Resolved, That the House do concur in the resolution.

Ordered, That it be returned.

R. ANDERSON, C. H. R.

What was done in consequence of this resolution does not appear. But on the 17th December, 1828, the preceding resolution was again passed in the same words, with an additional resolution, that a copy be furnished to His Excellency the Governor by the Clerk.

Which resolutions were concurred in by the House of Representatives, on the 18th Dec. 1828. (See pamphlet Laws and Resolutions for the year 1828, p. 37 of the Reports and Resolutions.)

Now, although these resolutions proceeded from a liberal and enlightened view of public expedience, yet the historical documents thus contemplated to be obtained, are not to be compared as to immediate and practical utility with those which the editor proposes to insert in the Constitutional department of the present volume. At any rate, his proposal of preserving these documents as exhibited in the present table of contents, is in perfect harmony with, and in pursuance of the spirit and intentions of the Legislature, twice over expressed in the above resolutions.

It seems to the Editor, moreover, that no future digest, code or collection of the whole or part of our Law, whether under legislative sanction or as a private undertaking, can be accurately or satisfactorily made, unless by the aid of these Statutes at Large with the accompanying notes and references, as a Basis and a platform whereon to build. It will be satisfactory to know what laws have been repealed, rejected, or lost in desuetude, that we may better understand the grounds and reasons of the more modern substitutions. All that can be reasonably required oy any future compiler up to this time, ought here to be found, as I trust it will be. Such, then, are the reasons that induce me to offer this plan for the consideration of the Governor, and through him, of the Legislature; with whom it will ultimately rest to determine how much of it, if any, shall be rejected from the volume.

The succeeding part of the work will be appropriated to acts of a public character, passed by our Provincial and State Assemblies, and will be strictly LEGISLATIVE, comprising (for reasons above given) the acts repealed and not repealed; the acts presumed, but not expressly declared by the Legislature to be obsolete; and those that are undoubtedly in force. These will be accompanied with notes and references to acts of Assembly, and to reported cases decided in the Courts of our own State. The Index will be made up during the printing of the sheets, as is usual, because the paging cannot be inserted before.

When this edition of the Statutes at large of our own State, on the plan now proposed, shall be completed with a separate Index to each volume, the Editor contemplates making up a full general Index of all the Laws of a public nature that have been enacted; arranged under appropriate heads, and comprising a digested summary or code of the Statute Law of the State as it stands; and this will complete the work so far as the views of the Legislature appear to extend.

Indeed, the main object in view with many persons at the present time, is a full and accurate digested INDEX of all our statutory enactments—an Index that may serve as a Code and Manual of our Statute Law, for popular use. It is certainly desirable that such a work should be undertaken and acccomplished; and I propose this as part of the duty I have myself undertaken. But such has been our irregular and miscellaneous Legislation, and so many are the acts and parts of acts that have relation to one and the same subject, intermingled with other matter in clauses and places so unlooked for and unexpected to the generality of persons who consult our acts of Assembly (as will be apparent from the notes and references even now presented) that I assert without fear of contradiction, such a digested Index or Code cannot be prudently attempted, until the present edition of the Statutes at large, with the notes and references accompanying it, shall have been completed. This edition such as I propose to make it, will be of absolute necessity as a foundation whereon to build the more brief and popular compilation desired. With all the aids that can be furnished, a very difficult and laborious work it will prove to be; and it should not be commenced, till all those aids are actually afforded, so that the compiler may have the whole ground before him.

This Prospectus is respectfully submitted to his Excellency the Governor, with a request that if he should approve the suggestion, it may undergo the examination of the Committee of the Legislature, to report how much of this plan shall be adopted or rejected, and how, and in what size the work shall be printed, and by whom.

THOMAS COOPER.

The Editor submits whether the numerous Laws referable to the following heads, would not be more conveniently collected to form a volume by themselves at the close of the work, viz:

The series of Laws concerning *Supplies and Appropriations.* These should not be left out, because it is satisfactory to know the manner in which supplies have been raised from time to time, the objects upon which the public money has been expended, and how much each has cost. These items will undoubtedly come in aid of future legislation, and form a necessary part of our legislative history.

The laws concerning *Roads, Rivers, Bridges, Ferries, Canals, and Rail Roads.*

The Series of laws respecting *Incorporated Societies.*

The series of laws relating to the *City of Charleston.*

The series of laws relating to the *Militia, Cavalry and Artillery.*

The series of laws relating to the *Colored Population.*

The series of laws relating to the arrangement of *Circuits, Circuit Courts, Courts of Common Pleas and Quarter Session, Courts of Equity, Constitutional Courts, and Courts of Appeal.*

Each of the preceding classes comprises so many laws, that if they be dispersed through the volumes chronologically, a reference to them, even with the aid of an index, will be extremely troublesome and laborious. If they be collected together, and each class arranged according to the order of date when each law was passed, the convenience of consultation and desirable accuracy, will be greatly facilitated.

All which is respectfully submitted, by

THOMAS COOPER, M.D. L.L.D.

December 9th, 1835.

THE COMMITTEE ON THE JUDICIARY, to whom was referred that part of the Governor's Message, which respected his proceedings under the Resolution adopted at the last session of the Legislature, authorizing a Digest of the Statutes to be prepared, beg leave to

REPORT,

That they have examined, with all the care which their time permitted, the materials prepared by Dr. Cooper for the work in which he is engaged, and the plan which he purposes to adopt in its prosecution; they are not only satisfied with the laborious research and sound judgment which are exhibited, but they cannot doubt if he is enabled to fill up the outlines which have been presented, the work will be of inestimable utility to the public, and form a lasting monument to the learning and ability of this distinguished jurist.

The Committee recommend that the Digest be completed on the plan submitted by Dr. Cooper, in his preface, commencing with the legislative records in 1682, and that the work be published by him with the aid and counsel of two gentlemen to be appointed by the Legislature.

As the Committee regard it as of the last importance to secure the entire intellectual powers of Dr. Cooper, and as the proposed work requires much and severe manual labour, they recommend that he be permitted to employ a clerk, to whom the salary of five hundred dollars shall be allowed for his services.

They also recommend that the suggestion of the Governor be adopted as to the salary to be paid to Dr. Cooper while engaged in the prosecution of the work. Respectfully submitted,

B. F. DUNKIN, *Chairman.*

The above Report was unanimously adopted by both Houses of the Legislature.

THE

INTRODUCTION TO THE PROVINCE LAWS

OF SOUTH-CAROLINA.

BY NICHOLAS TROTT, L. L. D.

His late Majesty King *Charles the Second*, by his royal Charter, bearing date at Westminster, the twentieth day of March, in the fifteenth year of his reign, Anno Domini 1662-3,* did give and grant unto Edward, Earl of Clarendon, George, Duke of Albermarle, William Lord Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carterett, Knt. and Bart. Sir William Berkley, Knight, and Sir John Colleton, Knight and Baronet, a large territory or tract of ground in America, bounded within 36 and 31 degrees of Northern Latitude, and West in a direct line as far as the South Seas, as in the said Charter *(a)* is more particularly set forth: Which said territory or tract of ground, was by his said Majesty in the said Charter *(b)* erected into a Province, by the name of the Province of Carolina, and they, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William Lord Craven, John Lord Berkeley, Antony Lord Ashley, Sir George Carterett, Sir William Berkeley, and Sir John Colleton, were made and constituted *(c)* the true and absolute *Lords* and *Proprietors* of the said *Province;* saving the faith, allegiance, and sovereign Dominion, due to the King, his heirs and successors. And accordingly by the said Charter, the said Lords Proprietors are invested with all the Royalties, Jurisdictions, Privileges, Powers and Authorities necessary for the Government of the said Province. And his said Majesty King Charles the Second, by a second Charter bearing date at Westminster, June thirtieth, in the seventeenth year of his reign, Anno Domini 1665, did confirm unto the said Lords Proprietors, the above-mentioned grant of the Province of Carolina, and did enlarge the Bounds thereof, as the same is particularly set forth in the said Charter, and did unite the Lands so added unto the said Province of Carolina, and did confirm and renew unto the said Lords Proprietors, as in the first Charter, all the Royalties, Jurisdictions, Privileges, Powers and Authorities necessary for the government of the said Province, with all and singular the like, and as ample rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and Franchises of what kind soever, within the territory or limits aforesaid of the said Province of Carolina; To HAVE, HOLD, use, exercise and enjoy the same, as amply, fully, and in as ample a manner, as any Bishop of Durham† in the Kingdom of England, ever heretofore had, held, used or enjoyed, or of right ought or could have, use or enjoy.

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* 1662-3, March 20th.—It may be useful to explain this mode of Chronological notation. The historical year commences January 1st. The civil year of England commences March 25th. Hence, all the days between January 1st and March 25th, are liable to be designated either as belonging to the historical year or to the civil year. March the 20th, above mentioned, will fall n the historical year 1663, and in the civil year 1662.—EDITOR.

† The Bishoprick of Durham is a Palatinate

TROTT'S INTRODUCTION

This said two Charters are exemplified, and placed immediately after the Introduction. His said Majesty King Charles the second, having by his said royal Charter, granted unto the said Lords Proprietors the said Province of Carolina, the said Lords Proprietors did agree upon Fundamental Constitutions for the better Government of the said Province, contained in eighty-one articles, bearing date July twenty-first, 1669, and signed,

ALBEMARLE	*(L. S.)*
CRAVEN,	*(L. S.)*
BERKLEY	*(L. S.)*
ASHLEY	*(L. S.)*
G. CARTERET	*(L. S.)*
P. COLLETON	*(L. S.)*

The Preamble to the said Constitutions is as follows—

"Our sovereign Lord the King, having out of his Royal Grace and "Bounty, granted unto us, George, Duke of Albemarle, Captain General "of all his Majesty's forces, Edward, Earl of Clarendon, William, Earl of "Craven, John Lord Berkley, Anthony Lord Ashley, Chancellor of the Ex-"chequer, Sir George Carterett, Vice Chamberlain of his Majesty's house-"hold, Sir Peter Colleton, Baronet, and Sir William Berkley, Knight, the "Province of Carolina, with all the Royalties, Properties, Jurisdic-"tions and Priviliges of a County Palatine, as large and ample as the "County Palatine of Durham; for the better settlement of the Government "of the said place, and establishing the interest of the Proprietors, with "equality and without confusion, and that the government of this Province "may be made most agreeable to the Monarchy under which we live, and "of which this Province is a part, and that we may avoid the erecting a "numerous democracy; WE, George, Duke of Albemarle, Edward, Earl "of Clarendon, William, Earl of Craven, John Lord Berkley, Anthony Lord "Ashley, Sir George Carterett, Sir Peter Colleton, and Sir William Berkley, "the true and absolute Lords and Proprietors of the Province aforesaid, "have agreed to this following form of Government, to be perpetually "established among us, unto which we do oblige ourselves and our heirs, "in the most binding way that can be devised."

In a few months afterwards, the said Lords Proprietors agreed upon the SECOND fundamental Constitutions of Carolina, contained in one hundred and twenty Articles, bearing date the first day of March 1669–1670, and signed and sealed,

ALBEMARLE CRAVEN ASHLEY
CORNBURY JO. BERKLEY G. CARTERET P. COLLETON

The THIRD Fundamental Constitutions of Carolina, containing one hundred and twenty articles, dated the twelfth day of January 1681-2, and were signed and sealed

CRAVEN, Palatine.	BATH, for the	P. COLLETON
ALBEMARLE	Lord CARTERET	JOHN ARCHDALE for
SHAFTSBURY	SETH SOTHELL	THOS. ARCHDALE.

The FOURTH Fundamental Constitutions of Carolina contained one hundred and twenty-one articles. But my copy of the said fourth Constitutions being imperfect, I can neither give the date of the said Constitutions, nor the names of the persons that signed the same.

The FIFTH and last Fundamental Constitutions of Carolina, consisting of forty-one articles, bearing date the eleventh day of April, 1698, were signed and sealed,

BATH, Palatine.	BATH, for the	WM. THORNBURGH for
A. ASHLEY.	Lord CARTERET.	Sir JOHN COLLETON.
CRAVEN.	THO. AMY.	WM. THORNBURGH.

The Preamble to the fifth and last fundamental Constitutions of Carolina, is as follows—

" Our late Sovereign Lord King Charles the second, having out of his " royal grace and bounty, granted to us the Province of Carolina, with " all the Royalties, Proprieties, Jurisdictions and Privileges of a County " Palatine, as large and ample as the County Palatine of Durham, with " other great privileges; for the better settlement of the Government of the " said place, and establishing the interests of the Lord Proprietors, with " equality and without confusion, and that the Government may be most " agreeable to the Monarchy under which we live, and of which this Pro- " vince is a part, and that we may avoid erecting a numerous democracy; " WE, the Lords Proprietors of the Province aforesaid, with the advice and " consent of the Landgraves and Caseques and Commons, in this present " Parliament assembled, have agreed to this following form of Government, " to be perpetually established amongst us, unto which we do oblige ourselves, " our heirs and successors, in the most binding way that can be devised."

These several Fundamental Constitutions of Carolina above mentioned, were drawn up and agreed upon by the then Lords Proprietors, as a scheme or modell of Government, with design to be proposed to the people of Carolina, for their consent, and so to pass into a Fundamental unalterable Law. But the people by their Representatives in assembly never giving their consent to any of the above mentioned Constitutions, no one of them ever obtained the force of a Law in South-Carolina, and therefore are not inserted here in this (Trott's) collection of the Laws of the said Province. How far they may be binding to the Lords Proprietors, amongst themselves, I shall not take upon me to determine.

The first person that by the Lords Proprietors was constituted Governour of the Province of South-Carolina, was Col. WILLIAM SAYLE.

A copy of his commission I have by me, bearing date July 26, 1669. It is in the name of George, Duke of Albemarle, Edward, Earl of Clarendon, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir Peter Colleton, and Sir William Berkley, and directed "To our trusty and well beloved, Col. William Sayle, Governour of all that Territory, or part of the Province of Carolina that lies southward and westward of Cape Carteret, and to our trusty and well beloved, our Counsellors and assistants to our said Governour."

To this commission there was added Instructions, consisting of fourteen articles. The Palatine and the rest of the Lords Proprietors sent over further instructions, which they styled " Temporary Laws, Commissions and instructions from the Palatine and the rest of the true and absolute Lords Proprietors of the Province of Carolina, to the Governour and Council of Ashley River in the said Province." These instructions consist of nineteen articles, and the model of the town, and bear date at Whitehall, May 1st, 1671. In the same book in which is contained several Transcripts of old records relating to Carolina, these follows,—

" Resolves agreed on by the Lord Proprietors, that till by a sufficient " number of inhabitants the Government of Carolina can be administred

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according to the form established in the Fundamental Constitutions,"—consisting of seven articles, but without date. But the instructions that immediately follow in the same book are dated December tenth, 1671, consisting of four articles.

So those resolves being placed between those temporary Laws or Instructions, May 1st, 1671, and the instructions dated the tenth of December following, it is very probable that those resolves were made in the same year, 1671.

Then follows instructions from the Palatine and the rest of the true and absolute Lords and Proprietors of the Province of Carolina, dated June twentieth, 1672, consisting of six articles. In the Preamble to which is set forth as followeth;

" Since the paucity of nobility and people will not permit the Fundamental Constitutions presently to be put into practice, it is necessary for " the supply of that defect, that some temporary laws should in the mean " time be made for the better ordering of affairs, till by a sufficient number " of inhabitants of all degrees, the Government of Carolina can be admin- " istred according to the form established in the Fundamental Constitu- " tions; WE, the Lords Proprietors of Carolina, upon due consideration, " have agreed to these following;"

1st. The Palatine shall name the Governour, &c. then follows—

AGRARIAN LAWS, or Instructions from the Lords Proprietors to the Governour and Council of Carolina, containing twenty-three articles, the Preamble to which is as follows:

" Since the whole foundation of Government is settled upon a right and " equal distribution of land, and the orderly taking of it up is of great " moment to the wellfare of this Province; and although the regulation of " this, need not be perpetual; yet since all the concernment thereof will " not cease as soon as the Government comes to be administred according " to the forms established in the Fundamental Constitutions, that the whole " distribution and allotment of land may be with all fairness and equality, " and that the convenience of all degrees may be as much as is possible in " their due proportion provided for, We, the Lords Proprietors of Carolina, " have agreed on these following Temporary Agrarian Laws.

" Before any river begin to be planted," &c.

And the last article is as follows—

" XXIII. If the Governour and Council in Carolina, shall at any time " hereafter represent to the Lords Proprietors, that any of the *Agrarian* " *Laws* for taking up and setting out of land, are inconvenient, the Lords " Proprietors reserve to themselves a power of altering the same."

These *Agrarian Laws*, or instructions, are without date, but I suppose they might be sent with the Instructions immediately preceding, dated June 20th, 1672, and were of the same date. All these instructions or temporary laws, as they term them, I suppose were made and sent during the government of the said Col. William Sayle, Joseph West, Esq. (the first time of his being Governour) and Sir John Yeamans, Bart., the latest of them being dated June twentieth, 1672, and Sir John Yeamans was proclaimed in April, 1672. Col. William Sayle, the Governor, dying, he was succeeded by JOSEPH WEST, Esq. who was chosen Governor August 28th, 1671, being the first time of his being Governor. And he was succeeded by Sir JOHN YEAMANS, Bart., whose commission was dated December 26th, 1671, and who was proclaimed Governor, April 19th, 1672; he died in August, 1674.

I cannot find any acts of the General Assembly passed during the several Governments of the said Col. William Sayle, Joseph West, Esq. the first time of his being Governor, or Sir John Yeamans.

At a Council held August 13th, 1674, Col. JOSEPH WEST was again chosen Governor, upon the death of Sir John Yeamans, being the second time of his being Governor, and continued Governor until September 26, 1682.

All the acts of the General Assembly that I could find, passed during the second time of Col. West's being Governour, the titles of them are contained in this collection, from number 1 to 19, and are the most ancient acts of Assembly that I could find, upon a diligent search in the Records of the Secretary's office, and upon perusing some old books and transcripts of laws which I have, that contain laws more ancient than any in the Secretary's office.

At a Council held September 26th, 1682, LANDGRAVE JOSEPH MORTON produced a commission from my Lord Craven to be Governour, and accordingly took his place as Governor, being the first time of his being Governor.

I do not find any acts of General Assembly, passed in the first time of Landgrave Morton being Governor.

On September 6th, 1684, JOSEPH WEST, Esq. signed a grant as Governor, being the third time of his being Governor. The acts of Assembly I could find passed during the third time of Col. West's being Governour, are in this collection, from number 20 to 25, inclusive. He was succeeded by Sir RICHARD KIRLE, who in about six months after his arrival and taking upon him the Government, died; and I have been informed by some of the ancient inhabitants, that upon the death of Sir Richard Kirle, Col. ROBERT QUARRY was chosen Governor, but did not continue in the Government above two months. I cannot find any acts passed during the short Government of Sir Richard Kirle, or Col. Quarry. Col. Robert Quarry was succeeded in the Government by JOSEPH MORTON, Esq. being the second time of his being Governor, (1685) in whose time all the acts that I could find passed, the titles of them are contained in this collection, from number 26 to 30, inclusive.

The succession of the Governors of the Province of South-Carolina, from the time of Joseph Morton, Esq. being Governor the second time, to the end of the time of passing the acts contained in this volume, the reader will see in the following collection of laws, viz:

The honorable	JAMES COLLETON, Esq.	(1686)	
	SETH SOTHWELL, Esq.	(1690)	
	PHILIP LUDWELL, Esq.	(1692)	
	THOMAS SMITH, Esq.	(1693)	
	JOSEPH BLAKE, Esq.	(1695)	the first time.
	JOHN ARCHDALE, Esq.	(1696)	of North Carolina, also
	JOSEPH BLAKE, Esq.	(1696)	the 2d time Governor.
	JAMES MOORE, Esq.	(1700)	
	Sir NATHANIEL JOHNSON, Knt.	(1703)	also of North Carolina.
	Col. EDW'D. TYNTE, Esq.	(1710)	also of N. & S. Carolina.
	ROBERT GIBBES, Esq.	(1711)	
	CHARLES CRAVEN, Esq.	(1712)	
	ROBERT JOHNSON, Esq.	(1717)	the first time.

In the year 1719, in the time of the Government of the honorable Robert Johnson, Esq. aforesaid, the generality of the inhabitants of the Province of South-Carolina, being very much dissatisfied with being under the Govern-

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ment of the Lords Proprietors, and thinking they should be better protected if they were immediately under the Government of the King; after having had several meetings and consultations in order thereunto, they at last publickly disowned the Lords Proprietors's Government.

And there being a necessity at that time to issue out writts to call an Assembly,

Upon the first meeting of the said Assembly they publickly declared in the presence of the Governor and his Council, that they would not treat with, or allow of any one that acted by commission or Authority from the Lords Proprietors, to whose government they were resolved they would no longer submit.

They had that respect for the then Governor Johnson, that they offered to continue him in the Government, if he would administer the same in the name of the King, by vertue of such their electing or authorizing him so to do, without any regard to his commission from the Lords Proprietors, though confirmed therein by the King, pursuant to the act of Parliament in that behalf.

But the Governor not thinking it safe or honourable to take upon him the Government by vertue of such an authority, he absolutely refused the same, and as far as he could, opposed them in their proceedings.

Whereupon they made an offer of the Government to Col. JAMES MOORE, son to the former Governor Moore, who readily accepted of the offer, and thereupon took upon him the Government of the Province, and passed several laws, the titles of which are contained in this collection, from number 423 to 451.

Accounts being sent home to England of this change of affairs in the Province of South Carolina, that the people had flung off the Government of the Lords Proprietors, and renounced any obedience to them or their Governor, and having appointed a Governor by their own authority:

His late Majesty King George the first, was pleased to constitute and appoint by commission under the broad seal of England, FRANCIS NICHOLSON, Esq. to be provisional Governor of this Province, till the matter was decided between the King and the Lords Proprietors.

Accordingly the said Francis Nicholson Esq. arriving in this Province the 21st day of May, 1721, he published his commission from the King, and took upon him the Government, and passed several laws or acts which are contained in the first part of this collection, from number 452 to 518, and in the second part containing Temporary Acts, from number 1 to 8.

The said Governor Nicholson going home to England, the Government was administered by the honourable ARTHUR MIDDLETON, Esq. as President of the Council.

During the time of his administering the Government as President, he passed several acts, which are contained in the first part of this collection, from number 519 to 542 inclusive, and in the second part containing the Temporary acts, from 9 to 11 inclusive.

At last, in the second year of the reign of his present Majesty, (1729) seven of the Lords Proprietors of Carolina came to an agreement to surrender their title and interest in the Province of Carolina to his Majesty.

Which agreement was confirmed by act of Parliament, passed in the second year of his Majesty's reign, entituled "an act for establishing an agreement with seven of the Lords Proprietors of Carolina, for their surrender of their title and interest in that Province to his Majesty." The copy of the said Act of Parliament is inserted in this collection, as being proper to be known by the inhabitants of this Province, and is placed immediately after the last laws passed by Arthur Middleton, Esq. No. 542.

Upon this above mentioned agreement, made with seven of the Lords Proprietors, to surrender their title and interest to his Majesty, and the same being established and confirmed by the said act of Parliament, his Majesty was pleased to give his royal commission under the broad seal of England, unto the above mentioned ROBERT JOHNSON, Esq. constituting him Governor of this Province, with the usual full and ample powers given to the other Governors of the King's plantations.

His Excellency Robert Johnson, Esq., arriving at this Province in the month of December, 1730, he published his commission, and took upon him the Government of this Province, and hath passed several acts which are contained in the first part of this collection, from number 543 to 577 inclusive, and in the second part containing the temporary acts, from number 12 to 36 inclusive.

CONTENTS OF THE FIRST CHARTER OF CAROLINA, 1663.

SECTION 1. The Proprietors therein named having besought King Charles the Second for leave to make a Colony in America, not yet cultivated or planted,

2d. The King gives, grants and confirms to them all that Territory in America, bounded within 36 and 31 degrees of North Latitude, and West as far as the South Sea,

3d. With Patronage, Jurisdictions and Privileges.

4th. Creating them Lords and Proprietors of the said Province, in free and common Soccage.

5th. The said country and Islands erected into the Province of Carolina.
Power granted to enact Laws for the whole Province, or any part thereof.
And to appoint Judges, Justices, Magistrates, and Officers.

6th. And until Assemblies of Freeholders be called, the said Proprietors to make orders and Ordinances.

7th. License to all the King's liege people to transport themselves to said Province.

8th. Licence to freight to every port, and transport goods, wares and merchandizes, saving to the King the customs and duties.

9th. Sundry goods to be imported and exported duty free.

10th. Ports and harbours to be constituted.

11th. Subsidies to belong to the Lords Proprietors.

12th. The Lords Proprietors may grant the Premises in fee simple, fee tayle, for life or for years, to any person or persons, to be held of the Proprietors,

13th. And confer any titles of honour not used in England.

14th. And to erect Forts, Castles, Cities, Towns, Fortifications, &c.

15th. To levy, muster and train men, make war, &c.

16th. And to exercise Martial Law.

17th. The Province of Carolina and its inhabitants to be subject to the Crown of England.

18th. The Lords Proprietors empowered to grant liberty of conscience.

19th. In cases of doubts or questions, the interpretation to be most favourable to the Lords Proprietors.

THE FIRST CHARTER.

THE FIRST CHARTER GRANTED BY KING CHARLES THE SECOND TO THE LORDS PROPRIETORS OF CAROLINA.

CHARLES THE SECOND, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c.—To all to whom these Presents shall come—GREETING:

1st. WHEREAS our right trusty, and right well beloved Cousins and Counsellors, *Edward*, Earl of Clarendon, our high Chancellor of England, and *George*, Duke of Albemarle, Master of our horse and Captain General of all our Forces, our right trusty and well beloved *William* Lord Craven, *John* Lord Berkley, our right trusty and well beloved Counsellor, *Anthony* Lord Ashley, Chancellor of our Exchequer, Sir *George Carteret*, Knt. and Baronet, Vice Chamberlain of our household, and our trusty and well beloved Sir *William Berkley*, Knt. and Sir *John Colleton*, Knight and Baronet, being excited with a laudable and pious zeal for the Propagation of the Christian Faith, and the Enlargement of our Empire and Dominions, have humbly besought leave of us by their industry and charge, to transport and make an ample Colony of our subjects, natives of our Kingdom of England, and elsewhere within our Dominions, unto a certain country hereafter described, in the parts of America not yet cultivated or planted, and only inhabited by some barbarous people, who have no knowledge of Almighty God.

2d. And *whereas* the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, have humbly besought us to give, grant and confirm unto them and their heirs, the said country, with Priviledges and Jurisdictions requisite for the good government and safety thereof; KNOW YE, therefore, that we, favouring the pious and noble purpose of the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, of our special grace, certain knowledge and meer motion, have Given, Granted and Confirmed, and by this our present Charter, for us, our heirs and succesors, do Give, Grant and Confirm unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, all that territory or tract of ground, scituate, lying and being within our dominions of America, extending from the North end of the Island called Lucke-Island, which lieth in the Southern Virginia Seas, and within six and thirty degrees of the Northern Latitude, and to the West as far as the South Seas, and so Southerly as far as the river St. Matthias, which bordereth upon the coast of Florida, and within one and thirty degrees of Northern Latitude, and so west in a direct line as far as the South seas aforesaid; together with all and singular Ports, Harbours, Bays, Rivers, Isles, and Islets belonging to the country aforesaid; and also all the Soil, Lands, Fields, Woods, Mountains, Fields, Lakes, Rivers, Bays and Islets, scituate or being within the bounds or limits aforesaid, with the fishing of all sorts of Fish, Whales, Sturgeons, and all other Royal Fishes in the Sea, Bays, Islets and Rivers within the premises, and the Fish therein taken; and moreover all Veins, Mines, Quarries, as well discovered as not discovered, of Gold, Silver, Gems, precious Stones, and all other

whatsoever, be it of Stones, Metals or any other thing whatsoever, found or to be found within the countries, isles and limits aforesaid.

3d. And furthermore, the Patronage and Advowsons of all the Churches and Chapels, which as Christian Religion shall increase within the Country, Isles, Islets and Limits aforesaid, shall happen hereafter to be erected, together with license and power to build and found Churches, Chappels and Oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated according to the Ecclesiastical laws of our Kingdom of England, together with all and singular the like, and as ample Rights, Jurisdictions, Priviledges, Prerogatives, Royalties, Liberties, Immunities and Franchises of what kind soever, within the Countries, Isles, Islets, and Limits aforesaid.

4th. To have, use, exercise and enjoy, and in as ample manner as any Bishop of Durham in our Kingdom of England, ever heretofore have held, used or enjoyed, or of right ought or could have, use, or enjoy. And them, the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, We do by these Presents, for us, our heirs and successors, make, create and constitute, the true and Absolute Lords Proprietors of the Country aforesaid, and of all other the premises; saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same, and saving also the right, title, and interest of all and every our subjects of the English nation, which are now planted within the limits and bounds aforesaid, (if any be). To have, hold, possess and enjoy the said Country, Isles, Islets, and all and singular other the Premises, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, Sir John Colleton, their heirs and assigns forever, to be holden of us, our heirs and successors, as of our Manner of East Greenwich in our County of Kent, in free and common Soccage, and not in capite, or by Knight service; yielding and paying yearly to us, our heirs and successors, for the same, the yearly rent of twenty marks of lawful money of England, at the feast of All-Saints, yearly forever, the first Payment thereof to begin and to be made on the feast of All-Saints, which shall be in the year of our Lord one thousand, six hundred and sixty-five, and also the fourth part of all gold or silver ore, which, within the limits aforesaid, shall from time to time happen to be found.

5th. And that the country, thus by us granted and described, may be dignified by us with as large Titles and Priviledges as any other part of our Dominions and territories in that tegion, Know ye, that we of our further grace, certain knowledge, and meer motion, have thought fit to erect the same tract of ground, county, and island, into a Province, and out of the fulness of our royal Power and Prerogative, We do, for us, our heirs and successors, erect, incorporate and ordain the same into a Province, and call it the Province of Carolina, and so from henceforth will have it called; and forasmuch as we have hereby made and ordained the aforesaid Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, the true Lords and Proprietors of all the Province aforesaid; Know ye, therefore moreover, that we, reposing especial trust and confidence in their Fidelity, Wisdom, Justice and provident Circumspection, for us our heirs and successors, do grant full and absolute power by virtue of these presents, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord

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Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, for the good and happy Government of the said Province, to ordain, make, enact, and under their seals to publish any laws whatsoever, either appertaining to the publick state of the said Province, or to the private utility of particular persons, according to their best discretion, of and with the advice, assent and approbation of the Freemen of the said Province, or of the greater part of them, or of their Delegates or Deputies, whom for enacting of the said laws, when and as often as need shall require, we will that the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, shall from time to time assemble in such manner and form as to them shall seem best, and the same laws duly to execute upon all people within the said Province and limits thereof, for the time being, or which shall be constituted under the power and government of them or any of them, either sailing towards the said Province of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it shall be needfull, and the quality of the offence requires it, by taking away member and life, either by them, the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, or by them or their Deputies, Lieutenants, Judges, Justices, Magistrates, Officers and Members to be ordained or appointed according to the tenor and true intention of these presents; and likewise to appoint and establish any Judges or Justices, Magistrates or Officers whatsoever, within the said Province, at sea or land, in such manner and form as unto the said Edward Earl of Clarendon, George Duke of Albemarle, William, Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton and their heirs, shall seem most convenient; also to remit, release, pardon and abolish, (whether before judgment or after) all crimes and offences whatsoever, against the said laws, and to do all and every other thing and things, which unto the compleat establishment of justice unto courts, sessions, and forms of judicature and manners of proceedings therein do belong, although in these presents express mention be not made thereof; and by Judges and by him or them delegated, to award process, hold pleas, and determine in all the said Courts, and places of Judicature, all actions, suits and causes whatsoever, as well Criminal or civil, real, mixt, personal, or of any other kind or nature whatsoever; which laws, so as aforesaid to be published, our pleasure is, and we do require, enjoin and command, shall be absolute, firm and available in law, and that all the liege people of us, our heirs and successors, within the said Province of Carolina, do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed; provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our Kingdom of England.

6th. And because such assemblies of freeholders cannot be so conveniently called, as there may be occasion to require the same, we do, therefore, by these presents, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Antony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by themselves or their magistrates, in that behalf lawfully authorized, full power and authority, from time to time to make and ordain fit and wholesome Orders and Ordinances, within the

Province aforesaid, to be kept and observed as well for the keeping of the peace, as for the better government of the people there abiding, and to publish the same to all to whom it may concern; which ordinances, we do by these presents streightly charge and command to be inviolably observed within the said Province, under the penalties therein expressed, so as such Ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our Kingdom of England, and so as the same ordinances do not extend to the binding, charging, or taking away of the right or interest of any person, or persons, in their freehold, goods or chattels whatsoever.

7th. And to the end, the said province may be the more happily increased, by the multitude of people resorting thither, and may likewise be the more strongly defended from the Incursions of Salvages and other Enemies, Pirates and Robbers, therefore we, for us, our heirs and successors, do give and grant by these Presents, Power, License and Liberty unto all the liege people of us, our heirs and successors, in our Kingdom of England or elsewhere, within any other our dominions, islands, colonies or plantations (excepting those who shall be especially forbidden) to transport themselves and families unto the said Province, with convenient shipping and fitting provisions, and there to settle themselves, dwell and inhabit, any law, statute, act, ordinance, or other thing to the contrary, in any wise notwithstanding. And we will also, and of our more special grace, for us, our heirs and successors, do streightly enjoin, ordain, constitute and command, that the said Province of Carolina, shall be of our allegiance, and that all and singular the subjects and liege people of us, our heirs and successors, transported or to be transported into the said Province, and the children of them and of such as shall descend from them, there born or hereafter to be born, be and shall be, denizons and lieges of us, our heirs and successors, of this our Kingdom of England, and be in all things held, treated, and reputed, as the liege faithful people of us, our heirs and successors, born within this our said Kingdom, or any other of our dominions, and may inherit or otherwise purchase and receive, take, hold, buy, and possess any lands, tenements or hereditaments within the same places, and them may occupy, possess and enjoy, give, sell, aliene and bequeathe; as likewise all liberties, franchises and privileges of this our Kingdom of England, and of other our dominions aforesaid, and may freely and quietly, have possess and enjoy, as our liege people born within the same, without the least molestation, vexation, trouble or grievance, of us, our heirs and successors, any statute, act, ordinance, or provision to the contrary notwithstanding.

8th. And furthermore, that our subjects of this our said Kingdom of England, and other our Dominions, may be the rather encouraged to undertake this expedition with ready and chearful minds; know ye, that we of our special grace, certain knowledge, and meer motion, do give and grant by virtue of these presents, as well to the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, as unto all others as shall from time to time repair unto the said Province, with a purpose to inhabit there, or to trade with the natives of the said Province, full liberty and license to lade and freight in any port whatsoever, of us, our heirs and successors, and into the said Province of Carolina, by them, their servants or assigns, to transport all and singular their goods, wares, and merchandises, as likewise all sorts of grain whatsoever, and any other things whatsoever, necessary for the food and clothing, not prohibited by the laws

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and statutes of our Kingdoms and Dominions, to be carried out of the same, without any let, or molestation, of us, our heirs and successors, or of any other of our officers, or ministers whatsoever, saving also to us, our heirs and successors, the customs and other duties and payments, due for the said wares and merchandises, according to the several rates of the places, from whence the same shall be transported. We will also and by these presents, for us, our heirs and successors, do give and grant license by this our charter, unto the said Edward Earl of Clarenden, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and to all the inhabitants and dwellers in the Province aforesaid, both present and to come, full power and absolute authority, to import or unlade by themselves or their servants, factors or assigns, all merchandises and goods whatsoever, that shall arise of the fruits and commodities of the said Province, either by land or by sea, into any of the ports of us, our heirs and successors, in our Kingdom of England, Scotland or Ireland, or otherwise to dispose of the said goods, in the said Ports; and if need be, within one year next after the unlading, to lade the said merchandises and goods again into the same, or other ships, and to export the same into any other countries, either of our Dominions, or foreign, being in amity with us, our heirs and successors, so as they pay such customs, subsidies, and other duties for the same, to us, our heirs and successors, as the rest of our subjects of this our Kingdom, for the time being, shall be bound to pay, beyond which we will not, that the inhabitants of the said Province of Carolina, shall be any ways charged.

9th. Provided nevertheless, and our will and pleasure is, and we have further for the consideration aforesaid, of our more especial grace, certain knowledge, and meer motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty, and authority, at any time or times, from and after the feast of St. Michael the Arch-Angel, which shall be in the year of our Lord Christ, one thousand, six hundred, sixty and seven, as well to import, and bring into any of our Dominions from the said Province of Carolina, or any part thereof, the several goods and commodities, hereinafter mentioned, that is to say, silks, wines, currants, raisins, capers, wax, almonds, oyl, and olives, without paying or answering to us, our heirs or successors, any custom, import, or other duty, for and in respect thereof for and during the term and space of seven years, to commence and be accompted, from and after the first importation of four tons of any the said goods, in any one bottom, ship or vessel from the said Province, into any of our Dominions; as also to export and carry out of any of our Dominions, into the said Province of Carolina, custom free, all sorts of tools which shall be usefull or necessary for the planters there, in the accommodation and improvement of the premises, any thing before, in these presents contained, or any law, act, statute, prohibition, or other matter, or any thing heretofore had, made, enacted or provided, or hereafter to be had, made, enacted or provided to the contrary, in any wise notwithstanding.

10th. And furthermore, of our more ample and especial grace, certain knowledge, and meer motion, we do for us, our heirs and successors, grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs

and assigns, full and absolute power and authority, to make, erect and constitute, within the said Province of Carolina, and the Isles and Islets aforesaid, such and so many seaports, harbours, creeks and other places, for discharge and unlading of goods and merchandises, out of ships, boats, and other vessels, and for lading of them, in such and so many places, and with such jurisdiction, priviledges and franchises unto the said ports belonging, as to them shall seem most expedient, and that all and singular the ships, boats and other vessels, which shall come for merchandises and trade into the said Province, or shall depart out of the same, shall be laden and unladen at such ports only, as shall be erected and constituted by the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and not elsewhere, any use, custom or any other thing to the contrary, in any wise notwithstanding.

11th. And we do furthermore will, appoint and ordain, and by these presents for us, our heirs and successors, do grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, that they the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, may from time to time for ever, have and enjoy, the customs and subsidies in the ports, harbors, creeks and other places within the Province aforesaid, payable for goods, merchandise and wares, there laded or to be laded, or unladed, the said customs to be reasonably assessed, upon any occasion, by themselves, and by and with the consent of the free people there, or the greater part of them as aforesaid; to whom we give power by these presents, for us, our heirs and successors, upon just cause and in a due proportion, to assess and impose the same.

12th. And further, of our special grace, certain knowledge, and meer motion, we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and absolute license, power and authority, that the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, Sir John Colleton, their heirs and assigns, from time to time, hereafter for ever, at his and their will and pleasure, may assign, alien, grant, demise or enfeof the premises, or any part or parcels thereof, to him or them that shall be willing to purchase the same, and to such person or persons as they shall think fit, to have and to hold, to them the said person or persons, their heirs or assigns, in fee simple or fee tayle, or for term for life, or lives, or years, to be held of them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by such rents, services, and customs, as shall seem meet to the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and not immediately of us, our heirs and successors, and to the same person and persons, and to all and every of them, we do give and

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grant by these presents, for us, our heirs and successors, license, authority and power, that such person or persons, may have or take the premises, or any parcel thereof, of the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and the same to hold, to themselves, their heirs or assigns, in what estate of inheritance whatsoever, in fee simple, or fee tayle, or otherwise, as to them and the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, shall seem expedient; the statute made in the Parliament of Edward, son of King Henry, heretofore King of England, our predecessor, commonly called the statute * of "*quia emptores terrarum;*" or any other statute, act, ordinance, use, law, custom or any other matter, cause or thing, heretofore published, or provided to the contrary, in any wise notwithstanding.

13th. And because many persons born, or inhabiting in the said Province, for their deserts and services, may expect and be capable of marks of honour and favour, which, in respect of the great distance, cannot be conveniently conferred by us; our will and pleasure therefore is, and we do by these presents, give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full power and authority, to give and confer, unto and upon, such of the inhabitants of the said Province, as they shall think do, or shall merit the same, such marks of favour and titles of honour as they shall think fit, so as these titles of honour be not the same as are enjoyed by, or conferred upon any the subjects of this our Kingdom of England.

14th. And further also, we do by these presents, for us, our heirs and successors, give and grant license to them, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, full power, liberty and license to erect, raise and build within the said Province and places aforesaid, or any part or parts thereof, such and so many forts, fortresses, castles, cities, buroughs, towns, villages and other fortifications whatsoever, and the same or any of them to fortify and furnish with ordinance, powder, shot, armory, and all other weapons, ammunition, habilements of war, both offensive and defensive, as shall be thought fit and convenient for the safety and welfare of the said Province and places, or any part thereof, and the same, or any of them from time to time, as occasion shall require, to dismantle, disfurnish, demolish and pull down, and also to place, constitute and appoint in and over all or any of the said castles, forts, fortifications, cities, towns and places aforesaid, governors, deputy governors, magistrates, sheriffs and other officers, civil and military, as to them shall seem meet, and to the said cities, buroughs, towns, villages, or any other place, or places, within the said Province, to grant "letters or charters of incorporation," with all liberties, franchises and priviledges, requisite and usefull, or to or within any corporations, within this our Kingdom of England, granted or belonging; and in the same cities, buroughs, towns and other places, to constitute, erect and appoint such, and so many markets, marts and fairs, as shall in that behalf be thought fit and necessary; and further also to erect and make in the Province aforesaid, or any part thereof, so many mannors, as to them shall

* 18 Ed. 1. West. 3 ch. 1 p. 55.

seem meet and convenient, and in every of the said mannors to have and to hold a Court Baron, with all things whatsoever which to a Court Baron do belong, and to have and to hold views of "frank pledge" and "court leet," for the conservation of the peace and better government of those parts, within such limits, jurisdictions and precincts, as by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or their heirs, shall be appointed for that purpose, with all things whatsoever, which to a court leet, or view of frank pledge do belong, the said court to be holden by stewards, to be deputed and authorized by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or their heirs, or by the Lords of other mannors and leets, for the time being, when the same shall be erected.

15th. And because that in so remote a country, and scituate among so many barbarous nations, and the invasions as well of salvages as of other enemies, pirates and robbers, may probably be feared; therefore we have given, and for us, our heirs and successors, do give power, by these presents, unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and Assigns, by themselves, or their captains, or other their officers, to levy, muster and train all sorts of men, of what condition or wheresoever born, in the said Province for the time being, and to make war and pursue the enemies aforesaid, as well by sea as by land, yea, even without the limits of the said Province, and by God's assistance to vanquish and take them, and being taken to put them to death by the law of war, or to save them at their pleasure; and to do all and every other thing, which unto the charge of a captain general of an army belongeth, or hath accustomed to belong, as fully and freely as any captain-general of an army hath or ever had the same.

16th. Also our will and pleasure is, and by this our charter we give unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, full power, liberty and authority, in case of rebellion, tumult or sedition, (if any should happen) which God forbid, either upon the land within the Province aforesaid, or upon the main sea, in making a voyage thither, or returning from thence, by him or themselves, their captains, deputies and officers, to be authorized under his or their seals for that purpose, to whom also, for us, our heirs and successors, we do give and grant by these presents, full power and authority to exercise martial law against mutinous and seditious persons of those parts, such as shall refuse to submit themselves to their government, or shall refuse to serve in the wars, or shall fly to the enemy, or forsake their colours or ensigns, or be loyterers or straglers, or otherwise howsoever offending against law, custom or discipline military, as freely and in as ample manner and form as any captain general of an army, by vertue of his office, might or hath accustomed to use the same.

17th. And our further pleasure is, and by these presents, for us our heirs and successors, we do grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and to all the tenants and inhabitants of the said Province of Carolina, both present and to come, and to every of them, that the said Province and the tenants and inhabitants thereof, shall not from

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henceforth be held or reputed a member or part of any colony whatsoever in America, or elsewhere, now transported or made, or hereafter to be transported or made; nor shall be depending on, or subject to their government in any thing, but be absolutely separated and divided from the same; and our pleasure is, by these presents, that they be separated, and that they be subject immediately to our crown of England, as depending thereof forever; and that the inhabitants of the said Province, nor any of them, shall at any time hereafter, be compelled or compellable, or be any ways subject or liable to appear or answer to any matter, suit, cause, or plaint whatsoever, out of the Province aforesaid, in any other of our islands, colonies, or dominions in America, or elsewhere, other than in our realm of England, and dominion of Wales.

18th. And because it may happen that some of the people and inhabitants of the said Province, cannot in their private opinions, conform to the publick exercise of religion, according to the liturgy form and ceremonies of the Church of England, or take and subscribe the oaths and articles, made and established in that behalf, and for that the same, by reason of the remote distances of these places, will, we hope, be no breach of the unity and uniformity established in this nation; our will and pleasure therefore is, and we do by these presents, for us, our heirs and successors, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and grant unto such person or persons, inhabiting and being within the said Province, or any part thereof, who really in their judgments, and for conscience sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid, or any of them, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs or assigns, shall in their discretion think fit and reasonable; and with this express proviso, and limitation also, that such person and persons, to whom such indulgences and dispensations shall be granted as aforesaid, do and shall, from time to time declare and continue, all fidelity, loyalty and obedience to us, our heirs and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said Province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalize or reproach the said liturgy, forms, and ceremonies, or any thing relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his or their obedience and conformity, thereunto.

19th. And in case it shall happen, that any doubts or questions should arise, concerning the true sense and understanding of any word, clause, or sentence contained in this our present charter, we will, ordain and command, that at all times, and in all things, such interpretation be made thereof, and allowed in all and every of our courts whatsoever, as lawfully may be adjudged most advantageous and favourable to the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, although express mention be not made in these presents, of the true yearly value and certainty of the premises, or any part thereof, or of any other gifts and grants made by us, our ancestors, or pre-

decessors, to them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or any other person or persons whatsoever, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, ordained or provided, or any other thing, cause or matter, whatsoever, to the contrary thereof, in any wise notwithstanding. IN WITNESS, &c.

Witness, the KING, at Westminster, the four and twentieth day of March, in the fifteenth year of our reign, (1663.)

PER IPSUM REGEM.

CONTENTS OF THE SECOND CHARTER OF CAROLINA, 1665.

His Majesty King Charles the Second,

SECTION 1st. Reciting a former Charter, and the Proprietors for all that territory called *Carolina*,

2d. Enlarges the grant to the said Proprietors,

3d. With Patronage, Jurisdictions, Priviledges, Prerogatives, &c.

4th. The tract of country hereby granted to be annexed to Carolina.
The Lords Proprietors empowered to constitute Counties, Baronies and Colonies, and to enact laws and constitutions, to appoint Courts, Judges, Justices, &c:

5th. To make Orders and Ordinances.

6th. Licence to the King's subjects to transport themselves thither,

7th. The said Province to be of the King's allegiance.

8th. Licence granted to freight in every port for transport thither, goods, wares and merchandizes, saving to the King his customs and duties.

9th. Sundry goods to be imported and exported free of duty.

10th. Ports and Harbours to be constituted.

11th. The subsidies to belong to the Lords Proprietors.

12th. The Lords Proprietors may grant and assign the premises, or any part thereof, to purchasers.

13th. Empowered to confer titles of honour not in use in England.

14th. To erect Forts, Castles, Cities, Towns and Fortifications.

15th. With power to muster and train men for war.

16th. To exercise Martial Law.

17th. The Province of Carolina to be subject immediately to the crown of England.

18th. The Lords Proprietors empowered to grant liberty of Conscience.

19th. In cases of doubt the interpretation to be most favourable to the Proprietors.

THE SECOND CHARTER GRANTED BY KING CHARLES THE SECOND, TO THE LORDS PROPRIETORS OF CAROLINA.

CHARLES THE SECOND, by the Grace of God, King of England, Scotland, Ireland, France, Defender of the Faith, &c.

1st. WHEREAS by our letters patent, bearing date the four and twentieth day of March, in the fifteenth year of our reign, we were graciously pleased to grant unto our right trusty and right well beloved cousin and Counsellor,

THE SECOND CHARTER.

Edward, Earl of Clarendon, our high Chancellor of England, our right trusty and right intirely beloved cousin and Counsellor, *George*, Duke of Albemarle, Master of our horse, our right trusty and well-beloved *William*, now Earl of Craven, our right trusty and well beloved Counsellor, *John*, Lord Berkley, our right trusty and well beloved Counsellor, *Anthony*, Lord Ashley, Chancellor of our Exchequer, our right trusty and well beloved Counsellor, *Sir George Carteret*, Knight and Baronet, Vice-Chamberlain of our household, our right trusty and well beloved *Sir John Colleton*, Knight and Baronet, and *Sir William Berkley*, Knight, all that Province, territory, or tract of ground, called Carolina, scituate, lying and being within our dominions of America, extending from the north-end of the island called Luke-island, which lieth in the Southern Virginia Seas, and within six and thirty degrees of the Northerm latitude, and to the west as far as the South Seas, and so respectively, as far as the river of Mathias, which bordereth upon the coast of Florida, and within one and thirty degrees of the Northern latitude, and so west in a direct line, as far as the South-seas aforesaid.

2d. Now know ye, that we, at the humble request of the said grantees, in the aforesaid letters patent named, and as a further mark of our especial favour towards them, we are graciously pleased to enlarge our said grant unto them, according to the bounds and limits hereafter specified, and in favour to the pious and noble purpose of the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, all that Province, territory, or tract of ground, scituate, lying and being within our dominions of America aforesaid, extending north and eastward as far as the north end of Charahake river or gulet, upon a streight westerley line to Wyonoake Creek, which lies within or about the degrees of thirty-six, and thirty minutes northern latitude, and so west in a direct line as far as the South-seas; and South and Westward as far as the degrees of twenty-nine inclusive northern latitude, and so west in a direct line, as far as the South Seas; together with all and singular ports, harbours, bays, rivers, and islets, belonging unto the Province or territory aforesaid, and also all the soil, lands, fields, woods, mountains, ferms, lakes, rivers, bays and islets, scituate or being within the bounds or limits last before mentioned; with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes, in the sea, bays, islets and rivers, within the premises, and the fish therein taken, together with the royalty of the sea, upon the coasts within the limits aforesaid. And moreover all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems, and precious stones, and all other whatsoever, be it of stones, metall, or any other thing found or to be found within the Province, territory, islets and limits aforesaid.

3d. And furthermore, the patronago and advowsons, of all the churches and chappels, which as the Christian religion shall increase within the Province, territory, islets and limits aforesaid, shall happen hereafter to be erected; together with licence and power to build and found churches, chappels, and oratories in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated, according to the Ecclesiastical laws of our kingdom of England, together with all and singular the like, and as ample rights, jurisdictions, priviledges, prerogatives, royalties, liberties, immunities and franchises, of what kind soever, within the territory, isles, islets, and limits aforesaid; to have, hold, use, exercise, and enjoy the same as amply, fully, and in as ample manner, as any Bishop of Durham in our Kingdom of England, ever heretofore had, held, used or enjoyed, or of right ought or could have, use, or enjoy; and

THE SECOND CHARTER

them, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns; we do by these presents, for us, our heirs and successors, make, create and constitute, the true and Absolute Lords and Proprietors of the said Province or Territory, and of all other the premises; saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same; To have, hold, possess and enjoy the said Province, territory, Isles, Islets, and all and singular other the Premises, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns forever, to be holden of us, our heirs and successors, as of our Mannor of East Greenwich in Kent, in free and common Soccage, and not in capite, or by Knight service; yielding and paying yearly to us, our heirs and successors, for the same, the fourth part of all gold and silver ore, which, within the limits hereby granted, shall from time to time happen to be found, over and besides the yearly rent of twenty marks, and the fourth part of the gold and silver ore, in and by the said recited letters patents, reserved and payable.

4th. And that the Province or territory hereby granted and described, may be dignified with as large Titles and Priviledges as any other parts of our Dominions and territories in that region, Know ye, that we of our further grace, certain knowledge, and meer motion, have thought fit to annex the same tract of ground and territory, unto the same Province of Carolina; and out of the fullness of our royal power and prerogative, we do for us, our heirs and successors, annex and unite the same to the said Province of Carolina. And forasmuch as we have made and ordained the aforesaid Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, the true Lords and Proprietors of all the Province or territory aforesaid; Know ye, therefore, moreover, that we, reposing especial trust and confidence in their Fidelity, Wisdom, Justice and provident Circumspection, for us our heirs and successors, do grant full and absolute power by virtue of these presents, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, and their heirs and assigns, for the good and happy Government of the said whole Province or territory, full power and authority to erect, constitute, and make several counties, baronies and colonies, of and within the said Provinces, territories, lands and hereditaments, in and by the said recited letters patents, and these presents, granted or mentioned to be granted, as aforesaid, with several and distinct jurisdictions, powers, liberties and priviledges; and also, to ordain, make and enact, and under their seals to publish any laws and constitutions whatsoever, either appertaining to the publick state of the said whole Province or territory, or of any distinct or particular county, barony, or colony of, or within the same, or to the private utility of particular persons, according to their best discretion, by, and with the advice, assent and approbation of the Freemen of the said Province or territory, or of the Freemen of the county, barony, or colony, for which such law or constitution shall be made, or the greater part of them, or of their Delegates or Deputies, whom for enacting of the said laws, when and as often as need shall require, we will that the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley,

THE SECOND CHARTER.

and their heirs and assigns, shall from time to time assemble, in such manner and form as to them shall seem best, and the same laws duly to execute upon all people within the said Province or territory, county, barony or colony, and the limits thereof, for the time being, which shall be constituted under the power and government of them, or any of them, either sailing towards the said Province or territory of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it be needfull, and the quality of the offence require it, by taking away member and life, either by them, the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, and their heirs, or by them or their Deputies, Lieutenants, Judges, Justices, Magistrates, Officers or Ministers, to be ordained and appointed according to the true tenour and intention of these presents; and likewise to erect or make any court, or courts whatsoever, of judicature or otherwise, as shall be requisite; and to appoint and establish any Judges or Justices, Magistrates or Officers whatsoever, as well within the said Province as at sea, in such manner and form as unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, and their heirs, shall seem most convenient; also to remit, release, pardon and abolish, (either before judgment or after) all crimes and offences whatsoever, against the said laws, and to do all and every other thing and things, which unto the compleat establishment of justice unto courts, sessions, and forms of judicature and manners of proceedings therein do belong, although in these presents express mention is not made thereof; and by Judges by him or them delegated, to award process, hold pleas, and determine in all the said Courts, and places of Judicature, all actions, suits and causes whatsoever, as well Criminal as civil, real, mixt, personal, or of any other kind or nature whatsoever; which laws, so as aforesaid to be published, our pleasure is, and we do enjoin, require and command, shall be absolutely firm and available in law, and that all the liege people of us, our heirs and successors, within the said Province or territory, do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed; provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England.

5th. And because such assemblies of freeholders cannot be so suddenly called, as there may be occasion to require the same, we do, therefore, by these presents, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by themselves or their magistrates, in that behalf lawfully authorized, full power and authority, from time to time to make and ordain fit and wholesome Orders and Ordinances, within the Province or territory aforesaid, or any county, barony, or province, of or within the same, to be kept and observed as well for the keeping of the peace as for the better government of the people there abiding, as to publish the same to all, to whom it may concern; which ordinances we do by these presents, streightly charge and command to be inviolably observed, within the same Province, counties, territories, baronies and provinces, under the penalties therein expressed, so as such ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our kingdom of England, and so as the same ordinances do

not extend to the binding, charging or taking away of the right or interest, of any person or persons in their freehold, goods, or chattels whatsoever.

6th. And to the end, the said Province or territory may be the more happily encreased, by the multitude of people resorting thither, and may likewise be more strongly defended from the incursions of salvages and other enemies, pirates and robbers: therefore we for us, our heirs, and successors, do give and grant by these presents, power, license, and liberty unto all the liege people of us our heirs and successors, in our Kingdom of England, or elsewhere, within any other our dominions, islands, colonies and plantations, (excepting those who shall be especially forbidden) to transport themselves and families, into the said province, or territory, with convenient shipping and fitting provisions, and there to settle themselves, dwell and inhabit, any law, act, statute, ordinance, or other thing, to the contrary, in any wise notwithstanding.

7th. And we will also, and of our special grace, for us our heirs and successors, do streightly enjoin, ordain, constitute, and command, that the said Province or territory, shall be of our allegiance, and that all and singular, the subjects and liege people of us, our heirs and successors, transported or to be transported into the said Province, and the children of them, and such as shall descend from them, there born or hereafter to be born, be, and shall be denizons and lieges of us, our heirs and successors of this our Kingdom of England, and be in all things, held, treated, and reputed as the liege faithfull people of us, our heirs and successors, born within this our said Kingdom, or any other of our Dominions, and may inherit, or otherwise purchase and receive, take, hold, buy and possess any lands, tenements, or hereditaments, within the said places, and them may occupy and enjoy, sell, alien, and bequeathe; as likewise all liberties, franchises, and priveledges of this our Kingdom, and of other our dominions, aforesaid, may freely, and quietly, have, possess, and enjoy, as our liege people born within the same, without the molestation, vexation, trouble or grievance of us, our heirs and successors, any act, statute, ordinance, or provision to the contrary, notwithstanding.

8th. And furthermore, that our subjects of this our said Kingdom of England, and other our Dominions, may be rather encouraged to undertake this expedition, with ready and chearful minds; know ye, that we of our especial grace, certain knowledge and meer motion, do give and grant, by vertue of these presents, as well to the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, and their heirs, as unto all others as shall from time to time, repair unto the said Province or territory, with a purpose to inhabit there, or to trade with the natives thereof, full liberty and license, to trade, and freight, in every port whatsoever, of us, our heirs and successors, and into the said Province of Carolina, by them, their servants and assigns, to transport all and singular, their goods, wares, and merchandises, as likwise all sorts of grain whatsoever, and any other thing whatsoever, necessary for their food and clothing, not prohibited by the laws and statutes of our Kingdom and Dominions, to be carried out of the same, without any lett, or molestation, of us, our heirs and sucoessors, or of any other our officers or ministers whatsoever, saving also to us, our heirs and successors, the customs and other duties and payments, due for the said wares and merchandises, according to the several rates of the places, from whence the same shall be transported.

9th. We will also, and by these presents, for us, our heirs and successors, do give and grant license by this our charter unto the said Edward, Earl o

THE SECOND CHARTER.

and their heirs and assigns, shall from time to time assemble, in such manner and form as to them shall seem best, and the same laws duly to execute upon all people within the said Province or territory, county, barony or colony, and the limits thereof, for the time being, which shall be constituted under the power and government of them, or any of them, either sailing towards the said Province or territory of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it be needfull, and the quality of the offence require it, by taking away member and life, either by them, the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, and their heirs, or by them or their Deputies, Lieutenants, Judges, Justices, Magistrates, Officers or Ministers, to be ordained and appointed according to the true tenour and intention of these presents; and likewise to erect or make any court, or courts whatsoever, of judicature or otherwise, as shall be requisite; and to appoint and establish any Judges or Justices, Magistrates or Officers whatsoever, as well within the said Province as at sea, in such manner and form as unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, and their heirs, shall seem most convenient; also to remit, release, pardon and abolish, (either before judgment or after) all crimes and offences whatsoever, against the said laws, and to do all and every other thing and things, which unto the compleat establishment of justice unto courts, sessions, and forms of judicature and manners of proceedings therein do belong, although in these presents express mention is not made thereof; and by Judges by him or them delegated, to award process, hold pleas, and determine in all the said Courts, and places of Judicature, all actions, suits and causes whatsoever, as well Criminal as civil, real, mixt, personal, or of any other kind or nature whatsoever; which laws, so as aforesaid to be published, our pleasure is, and we do enjoin, require and command, shall be absolutely firm and available in law, and that all the liege people of us, our heirs and successors, within the said Province or territory, do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed; provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England.

5th. And because such assemblies of freeholders cannot be so suddenly called, as there may be occasion to require the same, we do, therefore, by these presents, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by themselves or their magistrates, in that behalf lawfully authorized, full power and authority, from time to time to make and ordain fit and wholesome Orders and Ordinances, within the Province or territory aforesaid, or any county, barony, or province, of or within the same, to be kept and observed as well for the keeping of the peace as for the better government of the people there abiding, as to publish the same to all, to whom it may concern; which ordinances we do by these presents, streightly charge and command to be inviolably observed, within the same Province, counties, territories, baronies and provinces, under the penalties therein expressed, so as such ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our kingdom of England, and so as the same ordinances do

not extend to the binding, charging or taking away of the right or interest, of any person or persons in their freehold, goods, or chattels whatsoever.

6th. And to the end, the said Province or territory may be the more happily encreased, by the multitude of people resorting thither, and may likewise be more strongly defended from the incursions of salvages and other enemies, pirates and robbers: therefore we for us, our heirs, and successors, do give and grant by these presents, power, license, and liberty unto all the liege people of us our heirs and successors, in our Kingdom of England, or elsewhere, within any other our dominions, islands, colonies and plantations, (excepting those who shall be especially forbidden) to transport themselves and families, into the said province, or territory, with convenient shipping and fitting provisions, and there to settle themselves, dwell and inhabit, any law, act, statute, ordinance, or other thing, to the contrary, in any wise notwithstanding.

7th. And we will also, and of our special grace, for us our heirs and successors, do streightly enjoin, ordain, constitute, and command, that the said Province or territory, shall be of our allegiance, and that all and singular, the subjects and liege people of us, our heirs and successors, transported or to be transported into the said Province, and the children of them, and such as shall descend from them, there born or hereafter to be born, be, and shall be denizons and lieges of us, our heirs and successors of this our Kingdom of England, and be in all things, held, treated, and reputed as the liege faithfull people of us, our heirs and successors, born within this our said Kingdom, or any other of our Dominions, and may inherit, or otherwise purchase and receive, take, hold, buy and possess any lands, tenements, or hereditaments, within the said places, and them may occupy and enjoy, sell, alien, and bequeathe; as likewise all liberties, franchises, and priveledges of this our Kingdom, and of other our dominions, aforesaid, may freely, and quietly, have, possess, and enjoy, as our liege people born within the same, without the molestation, vexation, trouble or grievance of us, our heirs and successors, any act, statute, ordinance, or provision to the contrary, notwithstanding.

8th. And furthermore, that our subjects of this our said Kingdom of England, and other our Dominions, may be rather encouraged to undertake this expedition, with ready and chearful minds; know ye, that we of our especial grace, certain knowledge and meer motion, do give and grant, by vertue of these presents, as well to the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, and their heirs, as unto all others as shall from time to time, repair unto the said Province or territory, with a purpose to inhabit there, or to trade with the natives thereof, full liberty and license, to trade, and freight, in every port whatsoever, of us, our heirs and successors, and into the said Province of Carolina, by them, their servants and assigns, to transport all and singular, their goods, wares, and merchandises, as likwise all sorts of grain whatsoever, and any other thing whatsoever, necessary for their food and clothing, not prohibited by the laws and statutes of our Kingdom and Dominions, to be carried out of the same, without any lett, or molestation, of us, our heirs and successors, or of any other our officers or ministers whatsoever, saving also to us, our heirs and successors, the customs and other duties and payments, due for the said wares and merchandises, according to the several rates of the places, from whence the same shall be transported.

9th. We will also, and by these presents, for us, our heirs and successors, do give and grant license by this our charter unto the said Edward, Earl o

THE SECOND CHRTER.

Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, and to all the inhabitants, and dwellers, in the Province or territory aforesaid, both present and to come, full power and absolute authority to import or unlade, by themselves or their servants, factors or assigns, all merchandizes, and goods whatsoever, that shall arise of the fruits and commodities of the said Province or territory, either by land or sea, into any the ports, of us, our heirs and successors, in our Kingdom of England, Scotland, or Ireland, or otherwise to dispose of the said goods, in the said ports; and if need be, within one year next after the unlading, to lade the said merchandizes, and goods again, into the same, or other ships, and to export the same into any other countries, either of our Domininions or foreign, being in amity with us, our heirs and successors, so as they pay such customs, subsidies and other duties for the same, to us, our heirs and successors, as the rest of our subjects of this our Kingdom, for the time being, shall be bound to pay, beyond which we will not that the inhabitants of the said Province, or territory, shall be any way charged. Provided nevertheless, and our will and pleasure is, and we have further, for the considerations aforesaid, of our special grace, certain knowledge, and meer motion, given and granted, and by these presents, for us our heirs and successors, do give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, full and free license, liberty, power, and authority, at any time or times, from and after the feast of St. Michael the Arch Angel, which shall be in the year of our Lord Christ one thousand, six hundred, sixty and seven, as well to import and bring into any our Dominions, from the said Province of Carolina, or any part thereof, the several goods and commodities, hereinafter mentioned; that is to say, silk, wines, currans, raisins, capers, wax, almonds, oyl, and olives, without paying or answering to us, our heirs and successors, any custom, import or other duty, for, or in respect thereof, for and during the time and space of seven years, to commence and be accompted, from and after the first importation of four tons of any the said goods, in any one Bottom, Ship or Vessel, from the said Province or territory, into any of our Dominions; as also to export and carry out of any of our dominions, into the said Province or territory, custom free, all sorts of tools, which shall be usefull and necessary for the planters there, in the accommodation and improvement of the premises, any thing before, in these presents contained, or any law, act, statute, prohibition, or other matter or thing heretofore had, made, enacted, or provided, or hereafter to be had, made, enacted or provided, in any wise notwithstanding.

10th. And furthermore, of our more ample and especial grace, certain knowledge, and meer motion, we do for us, our heirs and successors, grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, full and absolute power and authority, to make, erect and constitute, within the said Province or territory, and the isles and islets, aforesaid, such and so many seaports, harbours, creeks, and other places for discharge and unlading of goods and merchandizes, out of ships, boats and other vessels, and for lading of them in such and so many places, and with such jurisdictions, priveledges, and franchises unto the said ports belonging, as to them shall seem most expedient; and that all and singular the ships, boats and other vessels which shall come for merchandizes, and trade into the said Province

or territory, or shall depart out of the same, shall be laden and unladen at such ports only, as shall be erected and constituted by the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, and not elsewhere, any use, custom or any thing to the contrary, in any wise notwithstanding.

11th. And we do furthermore, will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, that they the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, may from time to time forever, have and enjoy the customs, and subsidies in the ports, harbors, creeks, and other places within the Province aforesaid, payable for the goods, merchandizes, and wares, there laded, or to be laded or unladed, the said customs to be reasonably assessed upon any occasion, by themselves, and by and with the consent of the free people, or the greater part of them as aforesaid, to whom we give power by these presents, for us, our heirs and successors, upon just cause, and in a due proportion, to assess and impose the same.

12th. And further of our special grace, certain knowledge, and meer motion, we have given, granted, and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, full and absolute power, license and authority, that the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, from time to time, hereafter forever, at his or their will and pleasure, may assign, alien, grant, demise, or enfeoff the premises, or any part or parcel thereof, to him or them that shall be willing to purchase the same, and to such person or persons, as they shall think fit, to have and to hold, to them the said person or persons, their heirs and assigns, in fee simple, or in fee tayle, or for the term of life, or lives, or years, to be held of them the said Edward Earl of Clarendon, George Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, and their heirs and assigns, by such rents, services and customs, as shall seem fit to them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, and not of us, our heirs and successors; and to the same person and persons, and to all and every of them, we do give and grant by these presents, for us our heirs and successors, license, authority and power, that such person or persons, may have and take the premises, or any parcel thereof, of the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, and the same to hold, to themselves, their heirs or assigns, in what estate of inheritance soever, in fee simple or in fee tayle, or otherwise, as to them the said Edward Earl of Clarendon, George, Duke of Albemarle,

THE SECOND CHARTER.

William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, shall seem expedient; the statute in the Parliament of Edward, son of King Henry, heretofore King of England, our predecessor, commonly called the statute of "*quia emptores terrarum*," or any other statute, act, ordinance, use, law, custom, or any other matter, cause or thing, heretofore published or provided to the contrary in any wise, notwithstanding.

13th. And because many persons born and inhabiting in the said Province, for their deserts and services, may expect and be capable of marks of honour, and favour, which in respect to the great distance, cannot be conveniently conferred by us; our will and pleasure therefore is, and we do by these presents, give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, full power and authority to give and confer, unto and upon such of the inhabitants of the said Province or territory, as they shall think, do or shall merit the same, such marks of favour and titles of honour, as they shall think fit; so as their titles or honours, be not the same as are enjoyed by, or conferred upon, any of the subjects of this our kingdom of England.

14th. And further, also, we do by these presents, for us, our heirs and successors, give and grant license to them, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, full power, liberty and license, to erect, raise and build within the said province and places aforesaid, or any part or parts thereof, such, and so many forts, fortresses, castles, cities, burroughs, towns, villages and other fortifications whatsoever, and the same, or any of them, to fortify and furnish with ordinance, powder, shot, armour, and all other weapons, ammunition and habilements of war, both defensive and offensive, as shall be thought fit and convenient, for the safety and welfare of the said Province and places, or any part thereof, and the same, or any of them, from time to time, as occasion shall require, to dismantle, disfurnish, demolish and pull down; and also to place, constitute and appoint, in or over all or any of the said castles, forts, fortifications, cities, towns and places aforesaid, Governours, deputy Governours, Magistrates, Sheriffs, and other officers, civil and military, as to them shall seem meet; and to the said cities, burroughs, towns, villages, or any other place or places within the said Province or territory, to grant letters or charters of incorporations, with all the liberties, franchises and priviledges, requisite or usual, or to or within this our kingdom of England, granted or belonging; and in the same cities, burroughs, towns, and other places, to constitute, erect and appoint such and so many markets, marts and fairs, as shall in that behalf, be thought fit and necessary; and further also, to erect and make, in the Province or territory aforesaid, or any part thereof, so many mannors, with such Signories as to them shall seem meet and convenient, and in every of the said mannors, to have and to hold a Court Baron, with all things whatsoever, which to a court Baron do belong; and to have and to hold, views of franck pledge, and court leet, for the conservation of the peace and better government of those parts, with such limits, jurisdictions, and precincts, as by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, or their heirs, shall be appointed for that purpose, with all things whatsoever, which to a court leet or view of franck pledge do belong; the same courts to be holden by stewards, to be

deputed and authorized by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, or their heirs, by the Lords of the mannors and leets, for the time being, when the same shall be erected.

15th. And because that in so remote a country, and scituate among so many barbarous nations, the invasions as well of salvages as other enemies, pirates and robbers, may probably be feared, therefore we have given, and for us, our heirs and successors, do give power by these presents, unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs or assigns, by themselves or their captains, or other officers, to levy, muster and train up, all sorts of men, of what condition soever, or wheresoever born, whether in the said Province or elsewhere, for the time being, and to make war and pursue the enemies aforesaid, as well by sea as by land, yea, even without the limits of the said province, and by God's assistance, to vanquish and take them, and being taken, to put them to death by the law of war, and to save them at their pleasure, and to do all and every other thing, which to the charge and office of a captain general of an army belongeth, or hath accustomed to belong, as fully and freely as any captain general of an army hath had the same.

16th. Also, our will and pleasure is, and by this our charter, we give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, full power, liberty and authority, in case of rebellion, tumult or sedition (if any should happen, which God forbid) either upon the land within the province aforesaid, or upon the main sea, in making a voyage thither or returning from thence, by him and themselves, their captains, deputies, or officers, to be authorized under his or their seals, for that purpose, to whom, also, for us, our heirs and successors, we do give and grant by these presents, full power and authority to exercise martial law, against mutinous and seditious persons, of those parts, such as shall refuse to submit themselves to their government, or shall refuse to serve in the wars, or shall fly to the enemy, or forsake their colours, or ensigns, or be loyterers, or stragglers, or otherwise howsoever offending against law, custom, or military discipline, as freely, and in as ample manner and form as any captain general of an army, by vertue of his office, might or hath accustomed to use the same.

17th. And our further pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, and to all the tenants and inhabitants of the said province or territory, both present and to come, and to every of them, that the said province or territory, and the tenants and inhabitants thereof, shall not from henceforth be held or reputed a member or part of any colony whatsoever in America, or elsewhere, now transported or made, or hereafter to be transported or made; nor shall be depending on or subject to their government in any thing, but be absolutely separated and divided from the same; and our pleasure is, by these presents, that they be separated, and that they be subject immediately to our crown of England, as depending thereof forever; and that the inhabitants of the said province or territory, nor any of them, shall at any time hereafter be compelled,

THE SECOND CHARTER.

or compellable, or be any ways subject or liable, to appear or answer to any matter, suit, cause or plaint whatsoever, out of the province or territory aforesaid, in any other of our islands, colonies, or dominions in America, or elsewhere, other than in our realm of England, and dominion of Wales.

18th. And because it may happen that some of the people and inhabitants of the said Province, cannot in their private opinions conform to the publick exercise of religion, according to the liturgy, form and ceremonies, of the church of England, or take and subscribe, the oaths, and articles, made and established in that behalf, and for that the same, by reason of the remote distances of those places, will, as we hope, be no breach of the unity and conformity established in this nation, our will and pleasure therefore is, and we do by these presents, for us our heirs and successors, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, full and free license, liberty and authority, by such ways and means as they shall think fit, to give and grant unto such person and persons, inhabiting and being within the said province or territory, hereby or by the said recited letters patents, mentioned to be granted as aforesaid, or any part thereof, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations, and restrictions, as they, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, shall in their discretion think fit and reasonable, and that no person or persons, unto whom such liberty shall be given, shall be any way molested, punished, disquieted or called in question, for any difference in opinion or practice, in matters of religious concernment, who do not actually disturb the civil peace of the province, county, or colony, that they shall make their abode in; but all and every such person and persons may, from time to time, and at all times, freely and quietly have and enjoy his or their judgments and consciences in matters of religion, throughout all the said Province or colony, they behaving peaceably, and not using this liberty to licentiousness, nor to the civil injury or outward disturbance of others; any law, statute, or clause contained or to be contained, usage or customs of our realm of England to the contrary hereof, in any wise notwithstanding.

19th. And in case it should happen that any doubts or questions should arise, concerning the true sense and understanding of any word, clause, or sentence, contained in this our present charter, we will, ordain and command, that at all times, and in all things, such interpretation be made thereof, and allowed in all and every of our courts whatsoever, as lawfully may be adjudged most advantageous and favourable to the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, although express mention, &c.

*Witness, Our Self, at Westminster, the thirtieth day of June, in the seventeenth year of our reign, (*1665.*)*

PER IPSUM REGEM.

Note.—This Charter was, on the 25th July, 1729, surrendered to the King by seven of the eight Proprietors, under the authority of the act of

Parliament, 2 Geo. 2 ch. 34, hereinafter inserted. Lord Carteret, (afterwards Lord Granville) the eighth Proprietor, resigned on the 17th September, 1744, all pretensions to the Government, and his eighth part of the right to the soil was located by Commissioners, appointed by him and the King, next adjoining Virginia, "Bounded North by the Virginia line, East by the Atlantic, South by latitude 35 degrees 34 minutes North, and West as far as the bounds of the Charter." EXT'S FROM THE JOURNAL.

The Government of Carolina, from the surrender in 1729, became regal; and the Province was divided into North and South Carolina, by an order of the British Council, which fixed the boundaries between the two Provinces.

The alterations of the Southern Boundaries of South-Carolina, resulting from the establishment of Georgia, and other acts, are noticed in the collection of documents relating to Boundary.

Of the FIVE FUNDAMENTAL CONSTITUTIONS, mentioned by Mr. Trott, the first was drawn up at the request of Lord Ashley, one of the original proprietors, (better known as Anthony Ashley Cooper, Earl of Shaftesbury) by John Locke, dated 1st of March, 1669, six years after the granting of the first charter. Concerning these Fundamental Constitutions, I find in the MS. Journals of the House of Assembly of the Province of Carolina, the following particulars, viz.:

Extract from the Journals of the House of Assembly, in MS. Legis. Libr., from 1702 *to* 1706; *August* 30*th*, 1702.

Mr. Trott and Mr. Higginton, the committee to supervise the Constitutions, &c. report as followeth:

"We find that our late sovereign Lord, King Charles the Second, in his "royall charter, bearing date the 30th day of June, in the 17th year of his "reign, did give and grant unto the honourable the Lords Proprietors of "the Province of Carolina, ample rights, jurisdictions, priviledges, prerog-"atives, royalties, liberties, immunities and franchises, for the good and "happy government of the said Province, and the people therein habitting "or to inhabitt; and of his especiall grace towards the said people, in the "said charter hath made provision that the said Lords Proprietors have full "power and authoritye to make and enact, and under their hands and seals "to publish any law and constitutions whatsoever, either appertaining to "the publick state of the said whole Province, or to the private utility of "particular persons, according to their best discretions, by and with the "assent and advice and approbation of the freemen of the said Province; "That the said originall charter is the only true basis, from, by and accord-"ing to which, other laws, methods, and rules of government, which any-"wayes concerne the peoples lives, and their liberties, freeholds, goods and "chattels of the inhabittants of this Province, ought or legally can be taken, "derived and enacted. That the said charter particularly and expressly "provides for our civill liberties, but freedom in matters of religion and "conscience, is thereby given to us, by and under the Lords Proprietors's "consent.

"That the constitutions of which we are to consider, make and set up "an estate different and distinguished from the Lords Proprietors, and the "Common's house, without whose consent noe law shall or may be enacted, "which is called in the said constitutions, the upper house, consisting of

EXT'S FROM THE JOURNAL.

" the Landgraves and Casiques, who being created by their Lordships " second letters patents, are also a middle state between the Lords and " Commons; which constitution we cannot find that it anywayes contradicts " the said Charter.

" We find that the 22d article in the Constitutions, manifestly interferes " with our Jury acts, now in force; That all other articles in the constitu- " tions, are as neare and agreable as may be, to the said charter, or at least " no wayes repugnant to it."

August 31st, 1702.—The House entered into the debate of the said report, and ordered the charter to be read, which was read accordingly. The House ordered the last constitutions sent here by the Proprietors, to be read, which were read accordingly.

" The question is put, whether the House is of opinion that the Consti- " tutions now before us are valid, being enacted by us, since severall of the " proprietors are dead, that signed the same. Carried in the affirmative.

" Ordered, that the said Constitutions be read again, and debated para- " graph by paragraph, to-morrow morning."

" September 1st, 1702.—According to the order of the day, the Consti- " tutions were read, and the house entered into the debate, paragraph by " paragraph. The question is, whether the said Constitutions be ordered " a second reading. Carried in the negative."

I find no other notice of these Constitutions in the Journals. Hence it appears that the representatives of the people of Carolina, at that period, withheld from these documents the sanction of their confirmation, and refused to acknowledge their binding authority. These Constitutions were in force, and binding at least on the Proprietors who enacted them, until the Assembly so acted upon them in September, 1702; but to what extent they were previously in force, I cannot discover with accuracy. Under these Constitutions, the Proprietors appear to have claimed the right of repealing laws, passed by the House of Assembly. The contest on this point, is noticed by Dr. Ramsay in his history of South Carolina, (vol. 1st, page 72-76) in connection with the victory of the House of Assembly over Gov. Johnson and the Proprietary Government in 1719, when that form of government was superceded by surrender to the Crown.

These fundamental constitutions, so rejected by the House of Assembly, constitute, therefore, no part of the laws of South Carolina; but as the constitution of John Locke introduces unusual titles of honour, with appellations adopted in many of the early laws of the Province, and as Landgraves and Casiques, with large donations of land, were created under its authority, I deem it proper to give a place to this document here, more especially as the high reputation of the author renders it a document of legislation of much curiosity.

The term "PALATINE," *Comes Palatii*, Count of the palace, is a title formerly given to some great dignitary of the royal household. It then became the title of a governor of some local district, with the authority and privileges of vice-royalty; in England, the county of Durham is a county Palatine.

"LANDGRAVE," is a German title of nobility, connected with a landed estate of a certain extent; like the "Thane" of Saxon times.

"*Casique*," or "*Cazique*," a title of dominion among the Mexican Indians.

Thomas Smith, Governor of Carolina, was, by authority of the Proprietors who issued their patent to this effect, May 13th, 1694, created Landgrave, together with "four baronies, of 12,000 acres of land each; which title and baronies should forever descend to his heirs, on paying the annual rent of a penny, lawful money of England, for each acre."—Ramsay's History of South Carolina, vol. 1, page 45, note.

James Colleton, Governor, is also designated as Landgrave Colleton, in Ramsay's History of South Carolina, page 40, volume 1st. T. C.

THE FUNDAMENTAL CONSTITUTIONS OF CAROLINA,

DRAWN UP BY JOHN LOCKE; (MARCH 1st, 1669.)

(See Locke's Works, 8th Edition, volume 10th, page 175.)

Our sovereign Lord the King, having out of his royal grace and bounty, granted unto us the Province of Carolina, with all the royalties, properties, jurisdictions and priviledges of a County Palatine, as large and ample as the County Palatine of Durham, with other great Priviledges; for the better settlement of the government of the said place, and establishing the interest of the Lords Proprietors with equality, and without confusion; and that the government of this Province may be made most agreeable to the Monarchy under which we live, and of which this Province is a part; and that we may avoid erecting a numerous democracy: We, the Lords and proprietors of the Province aforesaid, have agreed to this following form of government, to be perpetually established amongst us, unto which we do oblige ourselves, our heirs and successors, in the most binding ways that can be devised.

1st. The eldest of the Lords Proprietors shall be Palatine; and upon the decease of the Palatine the eldest of the seven surviving proprietors shall always succeed him.

2d. There shall be seven other chief offices erected, viz., the Admirals, Chamberlains, Chancellors, Constables, Chief Justices, High Stewards and Treasurers; which places shall be enjoyed by none but the Lords Proprietors, to be assigned at first by lot; and upon the vacancy of any one of the seven great offices, by death or otherwise, the eldest Proprietor shall have his choice of the said place.

3d. The whole Province shall be divided into Counties; each county shall consist of eight signories, eight baronies and four precincts; each precinct shall consist of six colonies.

4th. Each signory, barony, and colony, shall consist of twelve thousand acres; the eight signories being the share of the eight proprietors, and the eight baronies of the nobility; both which shares, being each of them one fifth of the whole, are to be perpetually annexed, the one to the proprietors and the other to the hereditary nobility; leaving the colonies, being three-fifths, amongst the people; so that in setting out and planting the lands, the balance of the government may be preserved.

5th. At any time before the year one thousand, seven hundred and one, any of the lords proprietors shall have power to relinquish, alienate and dispose to any other person, his proprietorship, and all the signories, powers,

LOCKE'S CONSTITUTION

and interest, thereunto belonging, wholly and intirely together, and not otherwise. But after the year one thousand, seven hundred, those who are then Lords Proprietors, shall not have power to alienate, or make over their proprietorship, with the signories and priviledges thereunto belonging, or any part thereof to any person whatsoever, otherwise than in section 18th, but it shall all descend unto their heirs male; and for want of heirs male, it shall all descend on that Landgrave, or Casique of Carolina, who is descended of the next heirs female of the proprietor; and for want of such heirs, it shall descend on the next heir general: and for want of such heirs, the remaining seven proprietors shall upon the vacancy, choose a Landgrave to succeed the deceased proprietor, who being chosen by the majority of the seven surviving proprietors, he and his heirs, successively, shall be proprietors, as fully, to all intents and purposes, as any of the rest.

6th. That the number of eight proprietors may be constantly kept; if upon the vacancy of any proprietorship, the seven surviving proprietors shall not choose a Landgrave to be a proprietor, before the second biennial parliament after the vacancy, then the next biennial parliament but one, after such vacancy, shall have power to choose any Landgrave to be a proprietor.

7th. Whosoever after the year one thousand seven hundred, either by inheritance or choice, shall succeed any proprietor in his proprietorship and signories thereunto belonging, shall be obliged to take the name and arms of that proprietor whom he succeeds, which from thenceforth shall be the name and arms of his family and their posterity.

8th. Whatsoever Landgrave or Casique shall any way come to be a proprietor, shall take the signories annexed to the said proprietorship; but his former dignity, with the baronies annexed, shall devolve into the hands of the Lords Proprietors.

9th. There shall be just as many Landgraves as there are counties, and twice as many Casiques, and no more. These shall be the hereditary nobility of the Province, and by right of their dignity be members of parliament. Each Landgrave shall have four baronies, and each Casique two baronies, hereditarily and unalterably annexed to and settled upon the said dignity.

10th. The first Landgraves and Casiques, of the twelve first counties to be planted, shall be nominated thus, that is to say, of the twelve Landgraves, the Lords Proprietors shall each of them separately for himself, nominate and choose one; and the remaining four Landgraves of the first twelve shall be nominated and chosen by the palatine's court. In like manner of the twenty-four first Casiques, each proprietor for himself shall nominate and choose two, and the remaining eight shall be nominated and chosen by the palatine's court; and when the twelve first counties shall be planted, the Lords Proprietors shall again, in the same manner, nominate and choose twelve more Landgraves, and twenty four more Casiques, for the next twelve counties to be planted; that is to say, two-thirds of each number, by the single nomination of each proprietor for himself, and the remaining third by the joint election of the palatine's court; and so proceed in the same manner, till the whole province of Carolina be set out and planted, according to the proportions in these fundamental constitutions.

11th. Any Landgrave or Casique, at any time before the year one thousand seven hundred and one, shall have power to alienate, sell, or make over to any other person, his dignity, with the baronies thereunto belonging, all intirely together; but after the year one thousand, seven hundred, no Landgrave or Casique shall have power to alienate, sell, make over, or let the hereditary baronies of his dignity, or any part thereof, otherwise than as in section 18th; but they shall all intirely, with the dignity thereunto belong-

ing, descend unto his heirs male; and for want of heirs male, all intirely and undivided, to the next heir general; and for want of such heirs shall devolve into the hands of the Lords proprietors.

12th. That the due number of Landgraves and Casiques, may be always kept up; if upon the devolution of any landgraveship, or Casiqueship, the palatine's court shall not settle the devolved dignity, with the baronies thereunto annexed, before the second biennial parliament after such devolution, the next biennial parliament but one, after such devolution, shall have power to make any one landgrave or casique, in the room of him who dying without heirs, his dignity and baronies devolved.

13th. No one person shall have more than one dignity, with the signiories or baronies thereunto belonging. But when soever it shall happen, that any one who is already Proprietor, Landgrave, or Casique, shall have any of these dignities descend to him by inheritance, it shall be at his choice to keep which of the dignities, with the lands annexed, he shall like best; but shall leave the other, with the lands annexed, to be enjoyed by him who not being his heir apparent, and certain successor, to his present dignity, is next of blood.

14th. Whosoever by right of inheritance, shall come to be Landgrave or Casique, shall take the name and arms of his predecessor in that dignity, to be from thenceforth the name and arms of his family and their posterity.

15th. Since the dignity of Proprietor, Landgrave or Casique, cannot be divided, and the signiories or baronies, thereunto annexed, must forever all intirely descend with and accompany that dignity; whensoever for want of heirs male, it shall descend on the issue female, the eldest daughter and her heirs shall be prefered, and in the inheritance of those dignities, and in the signiories or baronies annexed, there shall be no co-heirs.

16th. In every signiory, barony, and manor, the respective Lord shall have power in his own name to hold court leet there, for trying of all causes, both civil and criminal; but where it shall concern any person being no inhabitant, vassal, or leet man, of the said signiory, barony or manor, he upon paying down of forty shillings, for the Lords proprietors use, shall have an appeal from the signiory, or barony court, to the county court, and from the manor court, to the precinct court.

17th. Every manor shall consist of not less than three thousand acres, and not above twelve thousand acres, in one intire piece and colony; but any three thousand acres or more, in one piece, and the possession of one man, shall not be a manor, unless it be constituted a manor, by the grant of the palatine's court.

18th. The Lords of signiories and baronies, shall have power only of granting estates not exceeding three lives, or twenty one years, in two thirds of the said signiories, or baronies, and the remaining third shall be always demesne.

19th. Any Lord of a manor, may alienate, sell, or dispose to any other person and his heirs for ever, his manor all intirely together, with all the priviledges and leet men, thereunto belonging, so far forth as any colony lands; but no grant of any part thereof, either in fee or for any longer term than three lives, or one and twenty years, shall be good against the next heir.

20th. No manor for want of issue male, shall be divided amongst co-heirs; but the manor, if there be but one, shall all intirely descend to the eldest daughter and her heirs. If there be more manors than one, the eldest daughter first shall have her choice, the second next, and so on, beginning again at the eldest until all the manors be taken up; that so the priviledges which belong to manors, being indivisible, the lands of the

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manors, to which they are annexed, may be kept intire, and the manor not lose those priviledges, which upon parcelling out to several owners must necessarily cease.

21st. Every Lord of a manor, within his own manor, shall have all the powers, jurisdictions and priveledges, which a Landgrave or Casique hath in his baronies.

22d. In every signiory, barony and manor, all the leet men shall be under the jurisdiction of the respective Lords, of the said signiory, barony or manor, without appeal from him. Nor shall any leet man, or leet woman, have liberty to go off from the land of their particular Lord and live any where else, without license obtained from their said Lord, under hand and seal.

23d. All the children of leet men, shall be leet men, and so to all generations.

24th. No man shall be capable of having a court leet, or leet men, but a Proprietor, Landgrave, Casique, or Lord of a manor.

25th. Whoever shall voluntarily enter himself a leet man, in the registry of the county court, shall be a leet man.

26th. Whoever is Lord of leet men, shall upon the marriage of a leet man, or leet woman of his, give them ten acres of land, for their lives, they paying to him therefore, not more than one eighth part of all the yearly produce and growth of the said ten acres.

27th. No Landgrave or Casique, shall be tried for any criminal cause, in any but the Chief-justice's court, and that by a jury of his peers.

28th. There shall be eight supreme courts. The first called the palatine's court, consisting of the palatine and the other seven Proprietors. The other seven courts, of the other seven great officers, shall consist each of them of a Proprietor, and six counsellors added to him. Under each of these latter seven courts, shall be a college of twelve assistants. The twelve assistants of the several colleges, shall be chosen, two out of the Landgraves, Casiques, or eldest sons of the Proprietors, by the palatine's court; two out of the Landgraves, by the Landgraves' Chamber; two out of the Casiques, by the Casiques' chamber; four more of the twelve, shall be chosen by the Common's chamber, out of such as have been, or are, members of parliament, sheriffs, or justices of the county court, or the younger sons of Proprietors, or the eldest sons of Landgraves or Casiques; the two others shall be chosen by the Palatine's court, out of the same sort of persons out of which the common's chamber is to choose.

29th. Out of these colleges, shall be chosen at first by the palatine's court, six counsellors to be joined with each Proprietor in his court; of which six, one shall be of those, who were chosen into any of the colleges by the palatine's court, out of the Landgraves, Casiques, or eldest sons of Proprietors; one, out of those who were chosen by the Landgrave's chamber; one, out of those who were chosen by the Casique's chamber; two, out of those who were chosen by the Common's chamber; and one out of those who were chosen by the Palatine's court, out of the Proprietor's younger sons, or eldest sons of Landgraves, Casiques, or Commons qualified as aforesaid.

30th. When it shall happen that any Counsellor dies, and thereby there is a vacancy; the grand counsel shall have power to remove any counsellor that is willing to be removed out of any of the Proprietor's courts, to fill up the vacancy, provided they take a man of the same degree and choice the other was of, whose place is to be filled up. But if no councellor consent to be removed, or upon such remove the last remaining vacant place, in any of the Proprietors courts, shall be filled up by the

choice of the grand council, who shall have power to remove out of any of the colleges, any assistant who is of the same degree and choice that counsellor was of, into whose vacant place he is to succeed. The grand council also, shall have power to remove any assistant, that is willing, out of one college into another, provided he be of the same degree and choice. But the last remaining vacant place in any college, shall be filled up by the same choice, and out of the same degree of persons the assistant was of, who is dead or removed. No place shall be vacant in any Proprietor's court, above six months. No place shall be vacant in any college, longer than the next session of parliament.

31st. No man being a member of the grand council, or of any of the seven colleges, shall be turned out, but for misdemeanour, of which the grand council shall be judge; and the vacancy of the person so put out, shall be filled, not by the election of the grand council, but by those who first chose him, and out of the same degree he was of, who is expelled. But it is not hereby to be understood, that the grand council hath any power to turn out any one of the Lords Proprietors, or their deputies; the Lords Proprietors having in themselves, an inherent original right.

32d. All elections in the parliament, in the several chambers of the parliament, and in the grand council, shall be passed by balloting.

33d. The Palatine's court shall consist of the palatine, and seven Proprietors, wherein nothing shall be acted without the presence and consent of the Palatine or his deputy, and three others of the Proprietors or their deputies. This court shall have power to call Parliaments, to pardon all offences, to make elections of all officers in the Proprietor's dispose, and to nominate and appoint port towns; and also shall have power by their order to the treasurer, to dispose of all public treasure, excepting money granted by the Parliament, and by them directed to some particular public use; and also shall have a negative upon all acts, orders, votes and judgements of the grand council and the parliament, except only as in Sec. 6th. and 12th. and shall have all the powers granted to the Lords Proprietors, by their patent from our sovereign lord the king, except in such things as are limited by these fundamental constitutions.

34th. The Palatine himself, when he in person shall be either in the army, or any of the Proprietors courts, shall then have the power of general, or of that Proprietor in whose court he is then present; and the Proprietor in whose court the Palatine then presides, shall during his presence there, be but as one of the council.

35th. The Chancellor's court, consisting of one of the Proprietors, and his six counsellors, who shall be called vice chancellors, shall have the custody of the seal of the Palatine, under which charters of lands or otherwise, commissions and grants of the Palatine's court, shall pass. And it shall not be lawful to put the seal of the Palatinate to any writing, which is not signed by the Palatine or his deputy, and three other Proprietors or their deputies. To this court also belong all state matters, despatches, and treaties with the neighbour Indians To this court also belong all invasions of the law, of liberty, of conscience, and all invasions of the public peace, upon pretence of religion, as also the license of printing. The twelve assistants belonging to this court, shall be called recorders.

36th. Whatever passes under the seal of the Palatinate, shall be registered in that proprietors court to which the matter therein contained, belongs.

37th. The Chancellor or his deputy, shall be always speaker in Parliament, and president of the grand council, and in his and his deputy's absence, one of the vice chancellors.

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38th. The Chief Justice's Court, consisting of one of the proprietors and his six counsellors, who shall be called justices of the bench, shall judge all appeals in cases both civil and criminal, except all such cases as shall be under the jurisdiction and cognizance of any other of the Proprietors courts, which shall be tried in those courts respectively. The government and regulation of registries of writings and contracts, shall belong to the jurisdiction of this court. The twelve assistants of this court, shall be called masters.

39th. The Constable's Court, consisting of one of the Proprietors and his six counsellors, who shall be called Marshalls, shall order and determine of all military affairs by land, and all land forces, arms, ammunition, artillery, garrisons and forts, &c., and whatever belongs unto war. His twelve assistants shall be called Lieutenant Generals.

40th. In time of actual war, the Constable while he is in the army, shall be General of the army; and the six Counsellors, or such of them as the Palatine's Court shall for that time or service appoint, shall be the immediate great officers under him, and the Lieutenant Generals next to them.

41st. The Admiral's Court, consisting of one of the Proprietors, and his six Counsellors, called Consuls, shall have the care and inspection over all ports, moles, and navigable rivers so far as the tide flows, and also all the public shipping of Carolina, and stores thereunto belonging, and all maritime affairs. This Court also shall have the power of the Court of admirality; and shall have power to constitute Judges in port towns, to try cases belonging to law-merchant, as shall be most convenient for trade. The twelve assistants belonging to this Court, shall be called proconsuls.

42d. In time of actual war, the admiral whilst he is at sea, shall command in chief, and his six counsellors, or such of them as the Palatine's Court shall for that time or service appoint, shall be the immediate great officers under him, and the proconsuls next to them.

43d. The Treasurer's Court, consisting of a proprietor and his six counsellors, called under treasurers, shall take care of all matters that concern the public revenue and treasury. The twelve assistants shall be called Auditors.

44th. The high Steward's Court, consisting of a proprietor and his six counsellors, called comptrollers, shall have the care of all foreign and domestic trade, manufactures, public buildings, work houses, highways, passages by water above the flood of the tide, drains, sewers, and banks against inundations, bridges, posts, carriers, fairs, markets, corruption or infection of the common air or water, and all things in order to the public commerce and health; also, setting out and surveying of lands; and also setting out and appointing places for towns to be built on, in the precincts, and the prescribing and determining the figure and bigness of the said towns, according to such models as the said courts shall order; contrary or differing from which models, it shall not be lawful for any one to build in any town. This court shall have power also to make any public building, or any new highway, or enlarge any old highway, upon any man's land whatsoever; as also to make cuts, channels, banks, locks and bridges for making rivers navigable, or for draining fens, or any other public use. The damage the owner of such lands (on or through which any such public things shall be made) shall receive thereby, shall be valued, and satisfaction made, by such ways as the grand council shall appoint. The twelve assistants belonging to this court shall be called surveyors.

45th. The Chamberlain's Court, consisting of a Proprietor and six Counsellors, called vice chamberlains, shall have the care of all ceremonies,

precedency, heraldry, reception of public messengers, pedigrees, the registry of all births, burials, and marriages, legitimation, and all cases concerning matrimony, or arising from it; and shall also have power to regulate all fashions, habits, badges, games and sports. To this Court it shall also belong, to convocate the grand council. The twelve assistants belonging to this Court, shall be called Provosts.

46th. All causes belonging to, or under the jurisdiction of any of the Proprietors Courts, shall in them respectively be tried, and ultimately determined, without any further appeal.

47th. The Proprietors Courts, shall have a power to mitigate all fines, and suspend all execution in criminal causes, either before or after sentence, in any of the other inferior courts respectively.

48th. In all debates, hearings or trials in any of the Proprietors Courts, the twelve assistants belonging to the said courts, respectively, shall have liberty to be present, but shall not interpose unless their opinions be required, nor have any vote at all; but their business shall be by the direction of the respective courts, to prepare such business as shall be committed to them; as also to bear such offices, and dispatch such affairs, either where the court is kept, or elsewhere, as the court shall think fit.

49th. In all the Proprietors's Courts, the Proprietor and any three of his Counsellors shall make a quorum; provided always, that for the better despatch of business, it shall be in the power of the Palatine's Court to direct what sort of causes shall be heard and determined by a quorum of any three.

50th. The grand council, shall consist of the Palatine and seven Proprietors, and the forty-two Counsellors of the several Propritors' Courts, who shall have power to determine any controversy that may arise between any of Proprietors' Courts, about their respective jurisdictions, or between the members of the same court, about their manner and methods of proceedings; to make peace and war, leagues, treaties, &c., with any of the neighbour Indians; to issue out their general orders to the Constable's, and Admiral's Courts, for the raising, disposing, or disbanding the forces, by land or by sea.

51st. The grand council shall prepare all matters to be proposed in Parliament. Nor shall any matter whatsoever, be proposed in Parliament, but what hath first passed the grand council; which after having been read, three several days in the Parliament, shall by majority of votes, be passed or rejected.

52d. The grand council shall always be judges of all causes and appeals that concern the Palatine, or any of the Lords Proprietors, or any Counsellor of any Proprietor's Court, in any cause which should otherwise have been tried in the court of which the said Counsellor is Judge himself.

53d. The grand council by their warrants to the Treasurer's Court, shall dispose of all the money given by the Parliament, and by them directed to any particular public use.

54th. The quorum of the grand council shall be thirteen, whereof a Proprietor or his deputy, shall be always one.

55th. The grand council shall meet the first Tuesday in every month, and as much oftener as either they shall think fit, or they shall be convocated by the Chamberlain's Court.

56th. The Palatine, or any of the Lords Proprietors, shall have power, under hand and seal, to be registered in the grand council, to make a deputy, who shall have the same power to all intents and purposes, as he himself who deputes him; except in confirming acts of Parliament as in Sec. 76th.

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and except also in nominating and choosing Landgraves and Casiques, as in Sec. 10th. All such deputations, shall cease and determine at the end of four years, and at any time shall be revocable, at the pleasure of the deputator.

57th. No deputy of any proprietor shall have any power, whilst the deputator is in any part of Carolina, except the Propritor, whose deputy he is, be a minor.

58th. During the minority of any Proprietor, his guardian shall have power to constitute and appoint his deputy.

59th. The eldest of the Lords Proprietors who shall be personally in Carolina, shall of course be the Palatine's deputy, and if no proprietor be in Carolina, he shall choose his deputy out of the heirs apparent of any of the Proprietors, if any such be there; and if there be no heir apparent of any of the Lords Proprietors, above one and twenty years old in Carolina, then he shall choose for deputy, any one of the Landgraves of the grand council; till he have by deputation under hand and seal, chosen any one of the fore-mentioned heirs apparent, or Landgraves, to be his deputy, the eldest man of the Landgraves, and for want of a Landgrave, the eldest man of the Casiques, who shall be personally in Carolina, shall of course be his deputy.

60th. Each Proprietor's deputy, shall be always one of his six Counsellors respectively; and in case any of the Proprietors hath not, in his absence out of Carolina, a deputy, commissioned under his hand and seal, the eldest nobleman of his court, shall of course be his deputy.

61st. In every county, there shall be a court consisting of a Sheriff, and four Justices of the county, for every precinct one. The Sheriff shall be an inhabitant of the county, and have at least five hundred acres of freehold within the said county; and the justices shall be inhabitants, and have each of them, five hundred acres apiece freehold within the precinct for which they serve respectively. These five shall be chosen from time to time and commissioned, by the Palatine's court.

62d. For any personal causes exceeding the value of two hundred pounds sterling, or in title of land, or in any criminal cause; either party upon paying twenty pounds sterling to the Lords Proprietors use, shall have liberty of appeal from the County Court, unto the respective Proprietor's Court.

63d. In every precinct there shall be a court consisting of a Steward, and four Justices of the precinct, being inhabitants, and having three hundred acres of freehold within the said precinct, who shall judge all criminal crimes; except for treason, murder, and any other offences punishable with death, and except all criminal causes of the nobility; and shall judge also, all civil causes whatsoever; and in all personal actions not exceeding fifty pounds sterling, without appeal; but where the cause shall exceed that value, or concern a title of land, and in all criminal causes; there either party upon paying five pounds sterling, to the Lords Proprietor's use, shall have liberty of appeal to the county court.

64th. No cause shall be twice tried in any one court, upon any reason or pretence whatsoever.

65th. For treason, murder, and all other offences punishable with death, there shall be a commission twice a year at least, granted unto one or more members of the grand council, or colleges, who shall come as itinerant Judges to the several counties, and with the Sheriff and four Justices, shall hold assizes, to judge all such causes; but upon paying of fifty pounds sterling, to the Lords proprietors use, there shall be liberty of appeal to the respective Proprietors court.

66th. The Grand Jury at the several assizes, shall upon their oaths and under their hands and seals, deliver into their itinerant Judges, a presentment of such grievances, misdemeanours, exigencies, or defects, which they think necessary for the public good of the country; which presentments shall by the itinerant Judges, at the end of their circuit, be delivered in to the grand council, at their next sitting. And whatsoever therein concerns the execution of laws, already made, the several Proprietor's courts, in the matters belonging to each of them respectively, shall take cognisance of it, and give such order about it, as shall be effectual for the due execution of the laws. But whatever concerns the making of any new law, shall be referred to the several respective courts, to which that matter belongs, and be by them prepared and brought to the grand council.

67th. For terms, there shall be quarterly, such a certain number of days, not exceeding one and twenty at any one time, as the several respective courts shall appoint. The time for the beginning of the term in the Precinct court shall be the first Monday in January, April, July and October; in the County court, the first Monday in February, May, August and November; and in the Proprietor's courts, the first Monday in March, June, September, and December.

68th. In the Precinct court, no man shall be a Juryman, under fifty acres of freehold. In the County court, or at the assizes, no man shall be a grand juryman, under three hundred acres of freehold; and no man shall be a petty juryman, under two hundred acres of freehold. In the Proprietor's courts, no man shall be a juryman under five hundred acres of freehold.

69th. Every jury shall consist of twelve men; and it shall not be necessary they should all agree, but the verdict shall be according to the consent of the majority.

70th. It shall be a base and vile thing, to plead for money, or reward; nor shall any one, (except he be a near kinsman, nor farther off than cousin german to the party concerned) be permitted to plead another man's cause, till before the Judge, in open court, he hath taken an oath that he doth not plead for money or reward, nor hath, nor will receive, nor directly, nor indirectly, bargained with the party whose cause he is going to plead, for money, or any other reward for pleading his cause.

71st. There shall be a Parliament consisting of the Proprietors, or their deputies, the Landgraves and Casiques, and one freeholder out of every precinct, to be chosen by the freeholders of the said precinct respectively. They shall sit all together in one room, and have, every member, one vote.

72d. No man shall be chosen a member of Parliament, who hath less than five hundred acres of freehold within the precinct for which he is chosen; nor shall any have a vote in choosing the said member, that hath less than fifty acres of freehold within the said precinct.

73d. A new Parliament shall be assembled the first Monday of the month of November, every second year, and shall meet and sit in the town they last sat in, without any summons, unless by the Palatine's court they be summoned to meet at any other place. And if there shall be any occasion of a parliament in these intervals, it shall be in the power of the Palatine's court, to assemble them in forty days notice, and at such time and place as the said court shall think fit; and the Palatine's court shall have power to dissolve the said Parliament, when they shall think fit.

74th. At the opening of every Parliament, the first thing that shall be done, shall be the reading of these Fundamental Constitutions, which the Palatine and Proprietors, and the rest of the members then present,

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shall subscribe. Nor shall any person whatsoever, sit or vote in the Parliament, till he hath that session subscribed these Fundamental Constitutions, in a book kept for that purpose, by the clerk of the parliament.

75th. In order to the due election of members, for the biennial Parliament, it shall be lawful for the freeholders of the respective precincts to meet the first Tuesday in September, every two years, in the same town or place that they last met in, to choose parliament men; and there choose those members that are to sit the next November following; unless the steward of the precinct, shall by sufficient notice, thirty days before, appoint some other place for their meeting in order to the election.

76th. No act or order of Parliament shall be of any force, unless it be ratified in open Parliament during the same session, by the Palatine or his deputy, and three more of the Lords Proprietors or their deputies; and then not to continue longer in force, but until the next biennial Parliament, unless in the mean time it be ratified under the hands and seals of the Palatine himself, and three more of the Lords Proprietors, themselves, and by their order published at the next biennial Parliament.

77th. Any Proprietor or his deputy may enter his protestation against any act of the Parliament, before the Palatine or his deputy's consent be given as aforesaid; if he shall conceive the said act to be contrary to this establishment, or any of these Fundamental Constitutions of the Government. And in such case, after full and free debate, the several estates shall retire into four several chambers, the Palatine and Proprietors into one; the Landgraves into anothe; the Casiques into another; and those chosen by the Precincts into a fourth; and if the major part of any of the four estates shall vote that the law is not agreeable to this establishment, and these Fundamental Constitutions of the Government; then it shall pass no farther, but be as if it had never been proposed.

78th. The quorum of the Parliament shall be one half of those who are members, and capable of sitting in the house, that present session of Parliament. The quorum of each of the Chambers of Parliament, shall be one half of the members of that chamber.

79th. To avoid multiplicity of laws, which by degrees always change the right foundations of the original government, all acts of Parliament whatsoever, in whatsoever form passed or enacted, shall at the end of a hundred years after their enacting, respectively cease, and determine of themselves, and without any repeal become null and void, as if no such acts or laws, had ever been made.

80th. Since multiplicity of comments, as well as of laws, have great inconveniences, and serve only to obscure and perplex; all manner of comments and expositions, on any part of these Fundamental Constitutions, or on any part of the common or statue laws of Carolina, are absolutely prohibited.

81st. There shall be a registry in every precinct, wherein shall be enrolled all deeds, leases, judgements, mortgages, and other conveyances, which may concern any of the lands within the said precinct; and all such conveyances, not so entered and registered, shall not be of force against any person or party to the said contract or conveyance.

82d. No man shall be Register of any precinct, who hath not at least three hundred acres of freehold within the said precinct.

83d. The freeholders of every precinct shall nominate three men, out of which three, the Chief Justice's Court shall choose and commission one to be Register of the said precinct, whilst he shall well behave himself.

84th. There shall be a Registry in every Signiory, Barony and Colony, wherein shall be recorded all the births, marriages and deaths that shall happen within the respective Signiories, Baronies and Colonies.

85th. No man shall be Register of a Colony that hath not above fifty acres of freehold within the said colony.

86th. The time of every one's age, that is born in Carolina, shall be reckoned from the day that his birth is entered in the registry, and not before.

87th. No marriage shall be lawful, whatever contract and ceremony they have used, till both the parties mutually own it, before the Register of the place where they were married, and he register it, with the names of the father and mother of each party.

88th. No man shall administer to the goods, or have a right to them, or enter upon the estate of any person deceased, till his death be registered in the respective registry.

89th. He that doth not enter, in the respective registry, the birth or death of any person that is born, or dies, in his house or ground, shall pay to the said Register one shilling per week for each such neglect, reckoning from the time of each birth or death respectively, to the time of entering it in the register.

90th. In like manner, the births, marriages, and deaths of the Lords Proprietors, Landgraves and Casiques, shall be registered in the Chamberlain's Court.

91st. There shall be in every colony, one Constable, to be chosen annually by the freeholders of the colony. His estate shall be above a hundred acres of freehold within the said colony; and such subordinate officers appointed for his assistance, as the county court shall find requisite, and shall be established by the said county court. The election of the subordinate annual officers, shall be also in the freeholders of the colony.

92d. All towns incorporate, shall be governed by a Mayor, twelve Aldermen and twenty-four of the common Council. The said common council shall be chosen by the present householders of the said town; the aldermen shall be chosen out of the common council, and the mayor out of the aldermen, by the palatine's court.

93d. It being of great consequence to the plantation, that port towns should be built and preserved; therefore whosoever shall lade or unlade any commodity at any other place but a port town, shall forfeit to the Lords proprietors, for each tun, so laden or unladen, the sum of ten pounds sterling; except only such goods as the palatine's court shall license to be laden or unladen elsewhere.

94th. The first port town upon every river, shall be in a colony, and be a port town forever.

95th. No man shall be permitted to be a freeman of Carolina, or to have any estate or habitation within it, that doth not acknowledge a God, and that God is publicly and solemnly to be worshiped.

96th. (As the country comes to be sufficiently planted, and distributed into fit divisions, it shall belong to the parliament to take care for the building of churches and the public maintenance of divines, to be employed in the exercise of religion, according to the Church of England; which being the only true and orthodox, and the national religion of all the king's dominions, is so also of Carolina; and therefore it alone shall be allowed to receive public maintenance by grant of parliament.)

97th. But since the natives of that place, who will be concerned in our plantation, are utterly strangers to Christianity, whose idolatry, ignorance or mistake, gives us no right to expel or use them ill; and those who remove from other parts to plant there, will unavoidably be of different opinions, concerning matters of religion, the liberty whereof they will expect to have allowed them, and it will not be reasonable for us on this account to keep them out; that civil peace may be obtained amidst diversity of opinions,

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and our agreement and compact with all men, may be duly and faithfully observed; the violation whereof, upon what pretence soever, cannot be without great offence to Almighty God, and great scandal to the true religion which we profess; and also that Jews, Heathens and other dissenters from the purity of the Christian religion, may not be scared and kept at a distance from it, but by having an opportunity of acquainting themselves with the truth and reasonableness of its doctrines, and the peaceableness and inoffensiveness of its professors, may by good usage and persuasion, and all those convincing methods of gentleness and meekness, suitable to the rules and design of the gospel, be won over to embrace, and unfeignedly receive the truth; therefore any seven or more persons agreeing in any religion, shall constitute a church or profession, to which they shall give some name, to distinguish it from others.

98th. The terms of admittance and communion with any church or profession, shall be written in a book, and therein be subscribed by all the members of the said church or profession; which book shall be kept by the public Register of the Precinct wherein they reside.

99th. The time of every one's subscription and admittance, shall be dated in the said book or religious record.

100th. In the terms of communion of every church or profession, these following shall be three, without which no agreement or assembly of men, upon pretence of religion, shall be accounted a church or profession within these rules.

1st. "That there is a God."

2d. "That God is publickly to be worshipped."

3d. "That it is lawful, and the duty of every man, being thereunto called by those that govern, to bear witness to truth; and that every church or profession shall in their terms of communion, set down the eternal way whereby they witness a truth as in the presence of God, whether it be by laying hands on or kissing the bible, as in the church of England, or by holding up the hand, or any other sensible way."

101st. No person above seventeen years of age, shall have any benefit or protection of the law, or be capable of any place of profit or honor, who is not a member of some church or profession, having his name recorded in some one, and but one religious record, at once.

102d. No person of any other church or profession shall disturb or molest any religious assembly.

103d. No person whatsoever, shall speak any thing in their religious assembly irreverently or seditiously of the government or governors, or of state matters.

104th. Any person subscribing the terms of communion, in the record of the said church or profession, before the precinct register and any five members of the said church or profession, shall be thereby made a member of the said church or profession.

105th. Any person striking his own name out of any religious record, or his name being struck out by any officer thereunto authorized by such church or profession respectively, shall cease to be a member of that church or profession.

106th. No man shall use any reproachful, reviling, or abusive language against any religion of any church or profession; that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors and that profession which otherwise they might be brought to assent to.

107th. Since charity obliges us to wish well to the souls of all men, and religion ought to alter nothing in any man's civil estate or right, it shall be lawful for slaves as well as others, to enter themselves and be of what church or profession any of them shall think best, and thereof be as fully members as any freeman. But yet no slave shall hereby be exempted from that civil dominion his master hath over him, but be in all things in the same state and condition he was in before.

108th. Assemblies upon what pretence soever of religion, not observing and performing the above said rules, shall not be esteemed as churches, but unlawful meetings, and be punished as other riots.

109th. No person whatsoever shall disturb, molest, or persecute another, for his speculative opinions in religion, or his way of worship.

110th. Every freeman of Carolina, shall have absolute power and authority over his negro slaves, of what opinion or religion soever.

111th. No cause, whether civil or criminal, of any freeman, shall be tried in any court of judicature, without a jury of his peers.

112th. No person whatsoever, shall hold or claim any land in Carolina, by purchase or gift, or otherwise, from the natives or any other whatsoever; but merely from and under the Lords Proprietors, upon pain of forfeiture of all his estate, moveable or immoveable, and perpetual banishment.

113th. Whosoever shall possess any freehold in Carolina, upon what title or grant soever, shall at the farthest, from and after the year one thousand six hundred and eighty-nine, pay yearly unto the Lords Proprietors, for each acre of land, English measure, as much fine silver as is at this present time in one English Penny, or the value thereof, to be as a chief rent and acknowledgement to the Lords Proprietors, their heirs and successors forever. And it shall be lawful for the palatine's court, by their officers, at any time, to take a new survey of any man's land, not to oust him of any part of his possession, but that by such a survey, the just number of acres he possesseth may be known, and the rent thereon due, may be paid by him.

114th. All wrecks, mines, minerals, quarries of gems and precious stones, with pearl fishing, whale fishing, and one half of all ambergris, by whomsoever found, shall wholly belong to the Lords Proprietors.

115th. All revenues and profits, belonging to the Lords Proprietors, in common, shall be divided into ten parts, whereof the palatine shall have three, and each proprietor one; but if the palatine shall govern by a deputy, the deputy shall have one of those three-tenths, and the palatine the other two tenths.

116th. All inhabitants and freemen of Carolina, above seventeen years of age, and under sixty, shall be bound to bear arms, and serve as soldiers, whenever the grand council shall find it necessary.

117th. A true copy of these Fundamental constitutions shall be kept in a great book, by the register of every precinct, to be subscribed before the said register. Nor shall any person of what degree or condition soever, above seventeen years old, have any estate or possession in Carolina, or protection or benefit of the law there, who hath not, before a precinct register, subscribed these fundamental constitutions, in this form:

> "I, A. B. do promise to bear faith, and true allegiance, to "our sovereign Lord King Charles the second, his heirs "and successors; and will be true and faithful to the Pala- "tine and Lords Proprietors of Carolina, their heirs and "successors; and with my utmost power, will defend them "and maintain the government, according to this establish- "ment in these fundamental Constitutions."

LOCKE'S CONSTITUTION

118th. Whatsoever alien shall in this form, before any precinct Register, subscribe these fundamental constitutions, shall be thereby naturalized.

119th. In the same manner shall every person, at his admittance into any office, subscribe these fundamental constitutions.

120th. These fundamental constitutions, in number a hundred and twenty, and every part thereof, shall be and remain, the sacred and unalterable form and rule of government of Carolina forever. Witness our hands and seals, the first day of March, 1669.

RULES OF PRECEDENCY.

1st. The Lords Proprietors: the eldest in age first, and so in order.
2d. The eldest sons of the Lords Proprietors; the eldest in age first, and so in order.
3d. The Landgraves of the grand council; he that hath been longest of the grand council first, and so in order.
4th. The Casiques of the grand council; he that hath been longest of the grand council first, and so in order.
5th. The seven Commoners of the grand council, that have been longest of the grand council; he that hath been longest of the grand council first, and so in order.
6th. The younger sons of the Proprietors; the eldest first, and so in order.
7th. The Landgraves; the eldest in age first, and so in order.
8th. The seven Commoners, who next to those before mentioned have been longest of the grand council; he that hath been longest of the grand council first, and so in order.
9th. The Casiques; the eldest in age first, and so in order.
10th. The seven remaining Commoners of the grand council; he that hath been longest of the grand council first, and so in order.
11th. The male line of the Proprietors.

The rest shall be determined by the Chamberlain's Court.

AN ACT

FOR REMOVING AND PREVENTING ALL QUESTIONS AND DISPUTES CONCERNING THE ASSEMBLING AND SITTING OF THIS PRESENT ASSEMBLY OF THE SETTLEMENT IN SOUTH CAROLINA.—*(No. 423 Trott; the original Act not numbered.)*

For preventing all doubts and scruples which may in any wise arise, concerning the meeting, sitting and proceeding, of this present Assembly, BE IT DECLARED AND ENACTED, by the Honourable James Moore, Esq., Governour, by and with the advice and consent of the Councill and Representatives of the inhabitants of the said settlement, now assembled at Charlestown, and by the authority of the same,—

That the representatives of the said settlement convened at Charlestown the seventeenth day of December, Anno Domini one thousand seven hundred and nineteen, and there sitting together with the Councill, on the twenty-first day following of the same month, are the two houses of Assembly of the said settlement, and so shall be, and are hereby declared, enacted and adjudged to be, to all intents, constructions and purposes whatsoever, notwithstanding any want of writ or writs of summons, or any other defect of form or default whatsoever, as if they had been summoned according to usuall form. And that this present Act, and all other Acts to which the assent of the present Governour, the Hon. James Moore, Esq., shall at any time be given before the next prorogation after the said twenty-first day of December, shall be understood, taken and adjudged in law, to begin and commence upon the said twenty-first day of December, on which day the said James Moore, Esq., at the request and by the advice of the said Councill and Representatives, did on the behalf and in the name of his Majestye King George, accept of the government of the said settlement.

I do on his Majestye's behalfe, assent to this Act, this 23d December, Anno Domini 1719.

JAMES MOORE.

AN ACT

FOR SUPPORTING THE PRESENT GOVERNMENT UNDER THE ADMINISTRATION OF THE HONOURABLE JAMES MOORE, ESQ., THE PRESENT GOVERNOUR OF THE SAME, OR ANY SUCCEEDING GOVERNOUR. ANNO DOMINI, 1720.

WHEREAS, by reason of the ILL-GOVERNMENT and MALE ADMINISTRATION of the Proprietors of this Settlement and their Officers, more at large sett forth in a general representation of the grievances of the inhabitants, to his most sacred Majestie King George, and to the Parliament of Great Britain, and by reason of the inability and incapacity of the said Proprietors to protect or defend this colony from the continual massacres and insults of our enemy Indians, or the invasions of foreign enemies; they the said inhabitants have been driven to so great extremities, that no ordinary means could be, were or can be sufficient to extricate themselves from the evils aforesaid:

WHEREFORE the said inhabitants, taking into their consideration their calamitous circumstances, and for the preservation of their lives and estates, according to the supreme law of Nature; and the duty they owe unto their said sovereign Lord the King, to prevent the desertion of the people, and to save so noble a colony from falling into the hands of his Majestie's enemies, did, with one heart and voice, renounce the said Proprietors, and every of them, their heirs and successors, and did unanimously elect the Honourable James Moore, Esq. to be Governour of this settlement, for and on his Majestie's behalfe.

AND WHEREAS the said James Moore, as Governour, and for the due and regular Government of the said settlement, and the Preservation of his Majestie's peace, and the better to oppose and withstand our said enemies, did constitute and appoint divers officers, both civil and military, until his Majestie's pleasure should be known in this behalfe.

We therefore humbly pray his most sacred Majestie, that it may be enacted, AND BE IT THEREFORE ENACTED, by the said Honourable James Moore, Esq. Governour for and in his Majestie's name, and by and with the advice and consent of the representatives of the said inhabitants of the said settlement, *now* met at Charlestown, that as well he the said James Moore, Governour, as also all persons aiding in this present General Assembly, and other officers and ministers, civil and military, whatsoever, created or to be created by him, the said James Moore, and acting under his authority, or made, created, or continued by a General Convention of the said inhabitants, or made, created or continued by the present General Assembly, or by the now Commons House of Assembly, by force or virtue of any law or custom of this province, at any time in force before the said late revolution of this settlement, Be, and are hereby confirmed in their respective offices, and so shall continue and be untill his Majestie shall see fitt to remove or displace the same, unless the said James Moore, Governour, or any other succeeding Governour, shall see cause in the mean time to remove any of them, pursuant to any power invested in the said James Moore, or the succeeding Governour, in that behalf.

And *be it further enacted* by the authority aforesaid, in regard of the exigency of the said affairs, That all acts and proceedings whatsoever, had and to be had, and done by the said Convention, Governour and Assembly,

or by any officers, persons, and Ministers whatsoever, deriving any authority under them, shall and are hereby declared to be good, valid and effectual in the law, to all intents and purposes whatsoever, as if they and every of them had been sufficiently authorized thereunto, unless his most sacred Majestie, or the Parliament of Great Britain, or the General Assembly of this settlement for the time being, do and shall expressly repeal, revoke, or annull the same: And all parties concerned in the said late Revolution in this settlement or in the said Government of affairs as aforesaid, shall be and are hereby justified and indemnified.

And *Be it further enacted* by the authority aforesaid, That all actions, prosecutions and suits, hereafter to be had, commenced or brought against any of the officers, ministers or persons aforesaid, on account of the premises, without especial and express leave given by his said Majestie in that behalf, shall and are hereby deemed null and void; And moreover, also, that all and every person sued or prosecuted on account of the premises, may plead the General Issue, and give this Act and the special matter, in evidence: And if the plaintiff shall become non-suited, or forbear further prosecution, or suffer discontinuance, or a verdict pass against him, the said defendant shall recover his double costs, for which he shall have the like remedy as in case where costs by law are given to defendant.

Assented to, the 17th June, 1720.

JAMES MOORE.

ANNO SECUNDO GEORGII II. REGIS.

Ch. 34. ANNO DOMINI 1729.

AN ACT,

FOR ESTABLISHING AN AGREEMENT WITH SEVEN OF THE LORDS PROPRIETORS OF CAROLINA, FOR THE SURRENDER OF THEIR TITLE AND INTEREST IN THAT PROVINCE TO HIS MAJESTY.

Preamble reciting the first Patent.

Whereas his late Majesty King Charles the second, by his letters patent under the great seal of Great Britain, bearing date at Westminster, in the fifteenth year of his reign, did grant and confirm unto Edward, then Earl of Clarendon, George, then Duke of Albemarle, William, then Lord Craven, John, then Lord Berkley, Anthony, then Lord Ashley, Sir George Carteret, Knight and Baronet, Sir William Berkley, and Sir John Colleton, Knt. and Baronet, all since deceased, their heirs and assigns, all that Territory or tract of ground, situate, lying and being within his said late Majesty's dominions in America, extending from the North end of the island called Luckar island, which lieth in the Southern Virginia seas, and within six and thirty degrees of the Northern latitude, and to the West as far as the South seas, and so southerly as far as the river St. Matthias, which bordereth upon the Coast of Florida, and within one and thirty degrees of Northern latitude, and so West in a direct line as far as the South seas aforesaid, together with all and singular ports, harbours, bays, rivers, isles and islets, belonging unto the country aforesaid, and also all the soil, lands, fields, woods, mountains, farms, lakes, rivers, bays and islets, situate, or being within the bounds or limits aforesaid, with the fishing of all sorts of fish, whales and sturgeons, and all other royal fishes, in the seas, bays, islets and rivers within the premises, and the fish therein taken, and moreover all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, and all other whatsoever, whether of stones, metals or any other thing whatsoever, found or to be found, within the country, isles, and limits aforesaid, and also the patronages and advowsons of all churches and chappels, which as Christian religion should increase within the country, isles, islets and limits aforesaid, should happen thenafter to be erected, together with license and power to build and found churches, chappels and oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated, according to the Ecclesiastical laws of the Kingdom of England, together with all and singular the like and so ample rights, jurisdictions, priviledges, royalties, prerogatives, liberties, immunities and franchises of what kind soever, within the country, isles, and limits aforesaid, to have, use, exercise, and enjoy, and in as ample manner as any Bishop of Durham in the Kingdom of England, ever thentofore had, held, used or enjoyed, or of right ought or could have, use or enjoy; and his said late Majesty did thereby for himself, his heirs and successors, make, create, and constitute the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, the true and absolute Lords and Proprietors of the

country aforesaid, and all others the premises, (saving as therein is mentioned,) to have, hold, possess, and enjoy, the said country, isles, islets, and all and singular, other the premises, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns forever, to be holden of his late said Majesty, his heirs and successors, as of his mannor of East Greenwich in the county of Kent, in free and common soccage, and not in capite, or by knight's service: And whereas, his late said Majesty King Charles the second, by other letters patent, under the great seal of England, bearing date the thirtieth day of June, in the seventeenth year of his Reign, reciting the letters patent herein first recited, did grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, then Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, all that Province, territory or tract of ground, situate, lying, and being within his said late Majesty's Dominions of America, extending North and Eastward, as far as the North end of Carahtuke River or Gullet, upon a strait Westerly line to Wyonake Creek, which lies within or about the degrees of thirty six and thirty minutes North Latitude, and so West in a direct line as far as the South Seas, and South and Westward, as far as the degrees of twenty-nine inclusive, Northern latitude, and so West in a direct line, as far as the South Seas, together with all and singular ports, harbours, bays, rivers and islets belonging unto the Province or Territory aforesaid, and also all the soil, lands, fields, woods, farms, lakes, rivers, bays or islets situate or being within the bounds or limits aforesaid last before, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the seas, bays, islets, and rivers, within the Premises, and the fish therein taken, together with the royalty of the sea upon the coast, within the limits aforesaid, and all veins, mines and quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, and all other whatsoever, be it of stones, metals, or any other things, found or to be found, within the Province, territory, islets and limits aforesaid, and furthermore the patronages and advowsons of all churches and chappels, which as Christian religion should increase within the Province, territory, isles and limits aforesaid, should happen thenafter to be erected, together with license and power to build and found churches, chappels, and oratories in convenient and fit places within the said bounds and limits, and to cause them to be dedicated and consecrated according to the Ecclesiastical laws of the Kingdom of England, together with all and singular the like, and as ample rights, jurisdictions, priviledges, prerogatives, royalties, liberties, immunities and franchises of what kind soever, within the territories, isles, islets, and limits aforesaid, to have, hold, use, exercise and enjoy the same, as amply and fully and in as ample manner, as any Bishop of Durham in the Kingdom of England ever thentofore had, held, used or enjoyed, or of right ought or could have, use or enjoy; and his said late Majesty, did thereby for himself, his heirs and successors, make, create, constitute and appoint them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, the true and absolute Lords and Proprietors of the said Province or territory, and of all other the premises, (saving as therein is mentioned,) to have, hold, possess and enjoy the said Province, territory, islets, and all and singular other the premises, to them the said Edward, Earl of Clarendon, George,

ACT FOR SURRENDER OF THE PROPRIETARY TITLE.

Second Patent.

ACT FOR SURRENDER OF THE PROPRIETARY TITLE.

Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns forever, to be holden of his said Majesty, his heirs and successors, as of his mannor of East Greenwich aforesaid, in free and common soccage, and not in capite, or by Knight's service, as in and by the said several late recited letters patent, relation being thereunto had, may appear; And whereas, the part, share, interest and estate of the said Edward, late Earl of Clarendon, of and in the Provinces, territories, islets, hereditaments and premises, in and by the said several recited letters patent granted and comprised, is now come unto and vested in the Honorable James Bertie, of the Parish of St. John the Evangelist, in the liberty of Westminister, in the county of Middlesex, Esquire, of his own Right; and the part, share, interest, and estate, of the said George, late Duke of Albemarle, of and in the same premises, is come unto and vested in the most noble Henry now Duke of Beauford, and in the said James Bertie, and the Honourable Dodington Greville, of Bulford, in the county of Wiltz, Esquire, the two surviving Devisees, named in the will of the most noble Henry late Duke of Beauford, in trust for the present Duke of Beauford, and for the right honourable Charles Noell Somerset, his brother, an infant; and the part, share, interest, and estate of the said William, late Earl of Craven, of and in the same premises, is come unto and vested in the right Honourable William now Lord Craven; and the part, share, interest and estate, of the said John late Lord Berkley, of and in the same premises, is now come unto and vested in Joseph Blake, of the Province of South Carolina, in America, Esquire; and the part, share, interest and estate of the said Anthony, late Lord Ashley, of and in the same premises, is now come unto and vested in Archibald Hutcheson, of the Middle Temple, London, Esquire, (in trust for John Cotton of the Middle Temple, London, Esquire,) and the part, share, interest and estate of the said late Sir John Colleton, of and in the said premises, is now come unto and vested in Sir John Colleton, of Exmouth, in the county of Devon, Baronet; and the part, share, interest and estate of the said late Sir William Berkley, of and in the same premises, is now come unto and vested in the Honourable Henry Bertie, of Dorton, in the county of Bucks, Esquire, or in Mary Danson, of the Parish of St. Andrews, Holbourne, in the county of Middlesex, Widow, or in Elizabeth Moor, of London, Widow, some or one of them; and the said Henry now Duke of Beauford, and the said James Bertie and Dodington Greville, as trustees in manner aforesaid, some or one of them, is or are seized in fee of and in one full undivided eighth part, (the whole into eight equal parts to be divided) of the premises, in and by the said recited letters patent, granted and comprized; and the same James Bertie, in his own Right, is now seized in fee, or of some other estate of inheritance, of and in one other full undivided eighth part; and each of them the said William Lord Craven, Joseph Blake, Archibald Hutcheson, as trustee for the said John Cotton, Sir John Colleton, and the said Henry Bertie, Mary Danson, and Elizabeth Moor, some or one of them, is or are respectively seized in fee, or of some other estate of inheritance, of and in one other full undivided eighth part, of and in the said Provinces, territories, and premises, islands, and hereditaments; the remaining eighth part or share of and in the said Provinces, territories and premises, which formerly belonging to the said Sir George Carteret, being now vested in the right Honourable John Lord Carteret, Baron of Hawes, his majesty's Lieutenant General and Governour of the Kingdom of Ireland; And whereas, by a Judgement or Order of the House of Lords, made the twenty-seventh day of March, last past, upon the appeal of the said Mary Danson, Widow

Present Proprietors.

of John Danson, Esquire, deceased, from a decree of the high Court of Chancery, made the seventh day of November one thousand seven hundred and twenty-one, and from a subsequent order of the fifteeth day of January, one thousand, seven hundred and twenty-three, it was ordered and adjudged, that the said decree and subsequent order, complained of in the said appeal, should be reversed; and it being offered on the part of the appellant, to pay the respondent, the said Henry Bertie, the money that he paid for the purchase of the Proprietorship, in question in the said cause, together with interest for the same, it was thereby further ordered, that the Court of Chancery should direct and cause an enquiry to be made, what was the principal sum of such purchase money, and from the time of payment thereof, to compute the interest for the same; and on the appellant's payment of what shall be found due for such principal money and interest, to the said Henry Bertie, it was further ordered and adjudged, That he shall convey the said Proprietorship, to her and her heirs, and also that the respondent Elizabeth Moor, should likewise by proper conveyances, at the charge of the appellant, convey all her Right to the said Proprietorship, to the appellant, and her heirs; And whereas, since the making of the said recited several letters patent, the Lords Proprietors of the Provinces and Territories aforesaid, for the time being, have made divers grants and conveyances, under their common seal, of several Offices, and also of divers parcels of land, situate within the said Provinces and territories, to several persons, under certain quit-rents, or other rents, thereby respectively reserved, and subject to several conditions, limitations or agreements, for avoiding or determining the estates of the Grantees therein mentioned, some of which may have become forfeited, and have also made divers grants of several Baronies, or large tracts of land, lying within the said Provinces or Territories, unto and for the use and benefit of several of the Lords Proprietors, or those under whom they claim to be held and enjoyed by them and their heirs in severalty; eight of which Baronies, so granted as aforesaid, do now remain vested in the said Henry now Duke of Beauford, or in the said James Bertie and Dodington Greville, as trustees for the purposes aforesaid, or in some or one of them; eight other of the said Baronies in the said William Lord Craven; six of the said Baronies in the present Sir John Colleton; six other Baronies in the said Archibald Hutcheson, (as trustee for the said John Cotton;) and six other Baronies in the said Joseph Blake; each of the said Baronies containing or being mentioned or intended to contain twelve thousand acres of land, or thereabouts, except one of the said Baronies now vested in the said William Lord Craven, which contains, or is mentioned to contain eleven thousand acres of land or thereabouts; And whereas, the said Henry, now Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Sir John Colleton, and Archibald Hutcheson, (who is trustee for the said John Cotton, as aforesaid,) being six of the present Lords Proprietors of the Province and territory aforesaid, have by their humble petition, to his Majesty in Council, offered and proposed to surrender to his Majesty, their said respective shares and interests, not only of and in the said Government, Franchises and Royalties, in and by the said recited letters patent granted, but also all the right and property they have in and to the soil in the aforesaid Provinces or territories, under the said several recited letters patent, or either of them; and also did further propose to make an entire surrender to his Majesty of their right to all the lands which they hold under the said grants, made by the Lords Proprietors as aforesaid, (except only one Barony, belonging to the present Sir John Colleton, which hath been settled and improved by his son) and also

ACT FOR SURRENDER OF THE PROPRIETARY TITLE.

Grants made by the Proprietors.

Proposals of surrender to the King.

Exception.

ACT FOR SURRENDER OF THE PROPRIETARY TITLE.

all their right and interest in all lands, granted and conveyed to other persons as aforesaid, which, by not being improved within the time limited in the said grants or conveyances, or for any other reason, would revert to them, praying; That in consideration of such surrender, his Majesty would be pleased to direct, and to cause to be paid to each of them, the said Henry Duke of Beauford, William Lord Craven, James Bertie, Henry Bertie, Sir John Colleton, and Archibald Hutcheson, the sum of two thousand five hundred pounds a-piece, without any deduction; And whereas, Samuel Wragg, of London, Merchant, being duly authorized by letter of Attorney, under the hand and seal of the said Joseph Blake, bearing date the eleventh day of July, one thousand seven hundred and twenty-eight, hath proposed for and on the behalf of the said Joseph Blake, to surrender and convey unto his Majesty, his heirs and sucessors, all the estate, right and interest of the said Joseph Blake, in and to the premises, upon payment of the like sum of two thousand five hundred pounds, to the said Joseph Blake, without any deduction; And whereas, they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Sir John Colleton and Archibald Hutcheson, who is a trustee for the said John Cotton as aforesaid, have laid before a Committee of the Lords of his Majesty's most honourable privy council, an estimate of all the Arrears of quit rents and other rents, and sum and sums of money now due and owing to them and the said Joseph Blake, and to the said John, Lord Carteret, which estimate, as computed, amounts to the sum of nine thousand five hundred pounds; and they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Sir John Colleton, and Archibald Hutcheson, have likewise humbly proposed; That if his Majesty would please to allow the sum of five thousand pounds for the said arrears, (over and above the said several sums of two thousand five hundred pounds, to paid to them respectively) they were willing to assign and make over to his Majesty, the right and title to the said arrears, and all other demands whatsoever, which they have or can have, upon the farmers, tenants or inhabitants of the Provinces or territories aforesaid, or of any of them; And whereas, the said Samuel Wragg, for and on the behalf of the said Joseph Blake, hath proposed to assign to his Majesty, all the right and interest of the said Joseph Blake, in and to the said arrears and demands, upon the terms aforesaid; And whereas his Majesty, taking into his royal consideration the great importance of the said Provinces and territories, to the trade and navigation of this kingdom, and being desirous to promote the same, as well as the welfare and security of the said Provinces and territories, by taking them under the more immediate Government of his Majesty, his heirs and successors, hath been graciously pleased to accept of the said several proposals, and to agree to the same, with such variations as are hereinafter mentioned; And whereas, from the nature of the respective estates and interests, proposed and agreed to be surrendered to his Majesty as aforesaid, great difficulties may arise in the manner of conveying the same, and it is just and necessary that the parts and shares of the said Provinces and territories, so proposed and agreed to be surrendered, should be secured, to his Majesty, his heirs and successors, which cannot effectually be done and attained without the authority of Parliament; BE IT ENACTED, by the King's most excellent Majesty, by and with the consent and advice of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that all those seven undivided eighth parts, (the whole into eight equal parts or shares to be divided) and all other the part or share, parts or shares, interest and estates of them the said Henry Duke of Beauford, William Lord Craven, James Bertie,

Conditions of surrender to the King.

Dodington Greville, Henry Bertie, Mary Danson and Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, as trustee for the said John Cotton, and Joseph Blake, and each of them, of and in the aforesaid Provinces or territories, called Carolina, and all and singular the royalties, franchises, lands, tenements, and hereditaments and premisses, in and by the said several recited letters patent, or either of them, granted or mentioned or intended to be granted, by his said late Majesty, King Charles the second, to the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, deceased, and Sir William Berkley, and their heirs and assigns, as aforesaid, with their and every of their rights, members, and appurtenances, and also all such powers, liberties, authorities, jurisdictions, preeminences, licenses, and priviledges, as they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, the present Sir John Colleton, the said Archibald Hutcheson, as trustee for the said John Cotton, and Joseph Blake, every or any of them, can or may have, hold, use, exercise or enjoy, by virtue of, or under the said recited letters patent, or either of them, and also all and singular Baronies, tracts, and parcels of land, tenements and hereditaments, which they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson and Elizabeth Moor, the present Sir John Colleton, the said Archibald Hutcheson, as trustee for the said John Cotton, and Joseph Blake, any or either of them, are or is seized or possessed of, or entitled unto, within the said Provinces or territories; except all such tracts of land, tenements and hereditaments, as have been at any time before the first day of January, one thousand, seven hundred and twenty seven, granted or conveyed by, or comprised in any grants, deeds, instruments or conveyances, under the common seal of the said Lords Proprietors, either in England, or in the Provinces aforesaid; and also, except all such plantations and lands as are now in the possession of the said Joseph Blake, his under tenants or assigns, by virtue of grants formerly made by the said Lords Proprietors of the said Provinces, for the time being, to other persons, and since conveyed to, or vested in the said Joseph Blake; And also, except all that Barony and tract of land containing twelve thousand acres or thereabouts, the possession whereof hath some time since been delivered by the present Sir John Colleton, unto Peter Colleton, Esquire, his second son; and all that other Barony or tract of land, containing twelve thousand acres or thereabouts, some time since conveyed by Sir John Tyrrel, Baronet, (formerly owner of the said eighth part or share now belonging to the said Archibald Hutcheson, as trustee for the said John Cotton,) to William Wight, Esq. and his heirs: Provided, that the before mentioned exceptions or any of them, shall not include or extend to any lands, comprised in any grant or grants, made either in England or Carolina, under the common seal of the Lords Proprietors for the time being, which since the making such grant or grants, have become forfeited by virtue of any clauses contained therein, or to any of the Baronies, herein before recited or mentioned to be still remaining and vested in the said Henry, Duke of Beauford, and in the said James Bertie and Dodington Greville, as trustees, some or one of them, and in the said William, Lord Craven, the present Sir John Colleton, and the said Archibald Hutcheson, as trustee for the said John Cotton, respectively, nor to any rents, services, seigniories, or rights to escheats, reserved upon, or incident to any such grant or grants, or any lands or estates thereby granted, all such forfeited lands, and all such rents, seigniories, and rights of escheat,

ACT FOR SURRENDER OF THE PROPRIETARY TITLE.

Exceptions.

ACT FOR SURRENDER OF THE PROPRIETARY TITLE

reserved upon or incident to any such grant or grants, or any lands and estates thereby granted, and also the Baronies last before mentioned, being hereby intended to be vested in the persons, and for the purposes hereinafter mentioned, and the reversion and reversions, remainder and remainders, yearly, and other rents, issues, and profits, of the same parts or shares, Baronies, Lands, tenements, hereditaments and premises, so as aforesaid proposed and agreed to be surrendered to his Majesty, and of every part and parcel thereof; and also all the estate, title, interest, trust, property, right of action, right of entry, claim and demand whatsoever, of them the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson and Elizabeth Moor, the present Sir John Colleton, the said Archibald Hutcheson, John Cotton and Joseph Blake, and each of them, of, in, unto or out of the same, every or any part and parcel thereof, by virtue of the said several recited letters patent, or either of them, or of any grant, assignment, conveyance, or assurance, made under, or by force of the same recited letters patent, or either of them, or otherwise howsoever, shall, from and after the first day of June, one thousand seven hundred and twenty nine, be vested and settled, and the same are hereby vested and settled, in and upon Edward Bertie of Gray's Inn, in the county of Middlesex, Samuel Horsey of the Parish of St. Martins in the fields, in the county of Middlesex, Henry Smith of Caversham, in the county of Oxon, and Alexius Clayton, of the Middle Temple, London, Esquires, to the only use of them the said Edward Bertie, Henry Smith, Samuel Horsey, and Alexius Clayton, their heirs and assigns, freed and discharged and absolutely acquitted, exempted and indemnified, of and from all estates, uses, trusts, intails, reversions, remainders, limitations, charges and incumbrances, titles, claims, and demands whatsoever; But nevertheless upon trust, and to the intent that they the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, and the survivor or the survivors of them, and the heirs of such survivor, upon payment by his Majesty, his heirs or successors, to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, or to the Survivors or to the survivor of them, or the executors or administrators of such survivor, of the sum of seventeen thousand, five hundred pounds, free and clear of all deductions, on or before the twenty ninth day of September, in the year of our Lord, one thousand, seven hundred and twenty nine, shall and do, by deed, indented, and to be enrolled in his Majesty's high Court of Chancery, surrender, convey, and assure unto his Majesty, his heirs and successors, all and singular, the said seven eighth parts or shares, (the whole into eight equal parts to be divided) and all other the parts or shares, interest and estates, of and in the aforesaid Provinces or territories, and all and singular the premises, hereby vested in them the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, and their heirs as aforesaid, which said sum of seventeen thousand five hundred pounds, they the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, or the executors and administrators of such survivor, shall immediately after receipt thereof, pay, apply, and dispose of in manner hereinafter mentioned; That is to say, the sum of two thousand five hundred pounds, part thereof, to the said James Bertie and Dodington Greville, trustees as aforesaid, or to the survivor of them, or to the executors or administrators of such survivor; two thousand five hundred pounds, other part thereof, to the said William, Lord Craven, his executors and administrators; two thousand five hundred pounds, other part thereof, to the said James Bertie, of his own right, his executors or administrators; two thousand

Proprietors in Trust for his Majesty.

The sum to be advanced by his Majesty.

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five hundred pounds, other part thereof, unto such person or persons, and in such shares and proportions as the same, according to the tenor, purport, and true meaning of the said order or judgement of the House of Lords, ought to be paid and applied; two thousand five hundred pounds, other part thereof, to the said Sir John Colleton, his executors or administrators; two thousand five hundred pounds, other part thereof, to the said John Cotton, his executors or administrators; and two thousand five hundred pounds, the residue thereof, to the said Samuel Wragg, for the use of the said Joseph Blake, or to the said Joseph Blake, his executors or administrators.

The property vested in his Majesty after payment

AND BE IT FURTHER ENACTED, by the authority aforesaid, that from and after payment of the said sum of seventeen thousand five hundred pounds, to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, or the executors or administrators of such survivor, and after the execution of the said surrender and conveyance to his Majesty, his heirs and successors, hereby directed to be made as aforesaid, his Majesty, his heirs and successors, shall have, hold, and enjoy, all and singular the said seven eighth parts or shares, (the whole into eight equal parts to be divided) and all other the parts or shares, interests and estates, of and in the aforesaid Provinces or territories, and all and singular the premises hereby vested in them the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, and their heirs as aforesaid, freed and discharged, and absolutely acquitted, exempted and indemnified of, from and against all estates, uses, trusts, intails, reversions, remainders, limitations, charges, incumbrances, titles, claims and demands whatsoever.

Arrears of Quit Rents on payment of £5000 to be assigned to the King.

AND BE IT FURTHER ENACTED, by the authority aforesaid, that seven eighth parts, (the whole into eight equal parts to be divided) of all and every the said arrears of quit rents, and other rents, sum and sums of money, debts, duties, accounts, reckonings, claims, and demands whatsoever, now due and owing to them the said Henry, Duke of Beauford, or to the said James Bertie and Dodington Greville, trustees as aforesaid, and to the said John, Lord Carteret, William, Lord Craven, James Bertie in his own right, Henry Bertie, Mary Danson and Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton or Joseph Blake, or any of them, (whether the same be more or less, than is computed as aforesaid) and all and every other parts or shares, of the said Henry, Duke of Beauford, James Bertie and Dodington Greville, trustees as aforesaid, William, Lord Craven, James Bertie in his own right, Henry Bertie, Mary Danson and Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton, and Joseph Blake, or any of them, of or in the said arrears, or which they or any of them, their or any of their heirs, executors, administrators or assigns, now have, or can or may have, claim, challenge or demand of or from the farmers, tenants and inhabitants, of the Provinces or territories aforesaid, or any part thereof, or any of them, shall, from and after the said first day of June, in the year of our Lord, one thousand seven hundred and twenty nine, be vested in the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors and survivor of them, and the executors or administrators of such survivor, upon trust, and to the intent that they the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, and the executors and administrators of such survivor, shall, upon payment by his Majesty, his heirs and successors, of the sum of five thousand pounds of lawful money of Great Britain, free and clear of all deductions, on or before the said twenty ninth day of September, in the

ACT FOR SURRENDER OF THE PROPRIETARY TITLE.

said year, to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, or the executors or administrators of such survivor, by deed indented and to be enrolled in his Majesty's High Court of Chancery, grant and assign to his Majesty, his heirs and successors, all and every the said seven eighth parts or shares, (the whole into eight equal parts or shares to be divided) and all other parts or shares of the said arrears, hereby vested in them the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton.

And whereas, the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Mary Danson, Dodington Greville, Sir John Colleton, John Cotton and Joseph Blake, are desirous that the said sum of five thousand pounds should be applied in manner hereinafter mentioned,

The 5000 Pounds, how to be applied.

BE IT FURTHER ENACTED, by the authority aforesaid, that the sum of five thousand pounds, after receipt thereof, shall be issued and paid by the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, or the survivors and survivor of them, and the executors and administrators of such survivor, to such of the officers, agents or servants of the Lords Proprietors, or to such other person or persons, and for such purposes as the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Mary Danson, Sir John Colleton, John Cotton, and Joseph Blake, their executors or administrators, or any four or more of them, (the executors or administrators of each of them to be accounted only as one) shall by writing or writings, under their hands, from time to time direct and appoint.

After payment the arrears to be vested in his Majesty.

AND BE IT FURTHER ENACTED, by the authority aforesaid, that from and after payment of the said sum of five thousand pounds, unto the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, the survivors or the survivor of them, or the executors or administrators of such survivor, and after the execution of the said grant and assignment of the said parts or shares, of the said arrears, hereby directed to be made as aforesaid, his Majesty, his heirs and successors, shall and may have, receive and enjoy the said seven eighth parts or shares (the whole into eight equal parts to be divided) and all and every other parts and shares of the said arrears of quit rents, and other rents, sum and sums of money, debts, duties, accounts, reckonings, claims and demands, hereby vested in the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, and shall and may have, use and pursue such and the like remedies for recovery thereof, as fully and effectually as the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Mary Danson, Dodington Greville, Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, any or either of them, might have had, used or pursued, if this act had not been made.

The receipts of the Proprietors in trust a sufficient discharge to his Majesty,

AND BE IT FURTHER ENACTED, by the authority aforesaid, That the receipt or receipts of the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, the survivors or the survivor of them, or executors or administrators of such survivor, under their hands, or his hand or hands respectively, shall be a sufficient discharge to his Majesty, his heirs and successors, of and for the said several sums of seventeen thousand five hundred pounds, and five thousand pounds, or so much thereof or of either of them, as such receipts or receipt shall be given for; and that his Majesty, his heirs and successors, upon and after such receipts or receipt, given as aforesaid, shall be absolutely acquitted and discharged of and from the said monies, and shall not be answerable or accountable for any loss, non-application or misapplication of the said money, or of any part thereof.

And to the former Proprietors

Act for surrender of the Proprietary title.

PROVIDED ALWAYS, AND IT IS HEREBY DECLARED AND ENACTED, by the authority aforesaid, that the receipt or receipts of the said James Bertie, or Dodington Greville, or the survivor of them, his executors or administrators, under his or their hand or hands respectively, shall be a sufficient discharge to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, their executors or administrators, for the said sum of two thousand five hundred pounds, payable to them for the said eighth part or share of the said Provinces, territories, royalties, lands and hereditaments, which was vested in the said Henry late Duke of Beauford, and the said sum of two thousand five hundred pounds, shall be and remain subject to the trusts reposed in them by the will of the said late Duke, or otherwise, concerning the eighth part or share, but the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, their heirs, executors, or administrators, shall not be answerable or accountable for any loss or misapplication thereof, or of any part thereof.

One Trustee not accountable for another's receipts.

PROVIDED ALSO, AND IT IS HEREBY DECLARED AND ENACTED, That the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, shall not, nor shall any of them, or the executors or administrators of any of them, be answerable or accountable for any money to be received by virtue of or under the trusts hereby reposed in them, any otherwise than each person, his executors or administrators, for such sum or sums of money as he or they shall respectively actually receive, and none of them shall be answerable or accountable for the acts, receipts, neglects, or defaults of the other of them; and also that they, the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, their executors or administrators, shall and may, out of the money hereby directed to be paid to them as aforesaid, retain and reimburse themselves for all costs, charges, damages and expenses, that they respectively shall sustain or be put unto, in and about the execution of the trusts hereby in them reposed.

Former Proprietors on payment of the sum agreed on acquitted from all arrears.

AND WHEREAS there is due and owing to the King's most excellent Majesty, for arrears of rent reserved by the said several recited letters patent, or one of them, several sums of money, computed to amount to three hundred pounds or upwards; NOW IT IS HEREBY FURTHER ENACTED AND DECLARED, by the authority aforesaid, that the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, the present Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, and every of them, their and every of their heirs, executors and administrators, respectively, from and immediately after the said twenty-ninth day of September, one thousand seven hundred and twenty-nine, (in case the said sums of seventeen thousand five hundred pounds, and five thousand pounds, shall then be paid and satisfied, and the sale hereby intended shall be then compleated) shall be, and are hereby fully and absolutely acquitted and discharged of and from all arrears of rent whatsoever, due or owing upon or by virtue of the said recited letters patent, or either of them.

Time limited for the surrender.

PROVIDED ALWAYS, AND IT IS HEREBY FURTHER ENACTED AND DECLARED, by the authority aforesaid, that if his Majesty, his heirs and successors, do not or shall not, on or before the said twenty-ninth day of September, one thousand seven hundred and twenty-nine, well and truly pay or cause to be paid, both the several sums of seventeen thousand five hundred pounds, and five thousand pounds in manner aforesaid, and according to the true meaning of this act, that then they the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, or the survivors or survivor of them, or the heirs, executors or administra-

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tors of such survivor, shall not make such surrender, assignment, or conveyance of the said seven eighth parts or shares of the said Province or territories, and of the said arrears, or either of them, to his Majesty, his heirs or successors, as hereby is directed, but shall from and after the said twenty-ninth day of September, one thousand seven hundred and twenty-nine, stand and be seized of and possessed of all and singular the premises hereby in them vested, to the only proper use and behoof of them, the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, the present Sir John Colleton, John Cotton, and Joseph Blake, and every of them, and of their and every of their heirs, executors, administrators and assigns, in such shares and proportions, and according to such respective rights and interests as they severally had, or could have been entitled to, in and unto the same premises, in case this act had never been made, and to and for no other use or trust, intent or purpose whatsoever.

Saving clause.

SAVING and reserving to all and every person or persons, bodies politick and corporate, their heirs, successors, executors, administrators and assigns, other than and except the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, their respective heirs, executors or administrators, and the heirs of their respective bodies, and all and every person and persons, claiming or to claim any estate and interest in the premises, or any part thereof, in remainder or reversion, expectant upon or after the determination of any estate tail, vested in them the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, or any of them, and all and every person and persons claiming, or to claim any estate or interest in the premises, or any part thereof, by or under the title of the said Henry, late Duke of Beauford, deceased, such satisfaction and recompense as is hereinafter mentioned, for all such estate, right, title, interest, property, claim or demand whatsoever, in, to or out of the premises, or any part thereof, as they or any of them, now have, or might have had or been entitled to, in case this act had never been made.

Persons having right, may recover from his Majesty in 7 years.

PROVIDED ALWAYS, AND BE IT FURTHER ENACTED by the authority aforesaid, That if any person or persons (other than and except the persons herein before excepted) who now have or shall have any estate, right, title, interest, claim or demand, either in law or in equity, of, in, to or out of the premises herein vested as aforesaid, or any part thereof, shall, within the space of seven years after the same shall be conveyed unto and vested in his Majesty, his heirs and successors as aforesaid, commence and prosecute any action or suit either in law or equity, by petition of right, English bill or otherwise, against his Majesty, his heirs or successors, or the proper officer or officers on his or their behalf, wherein such persons might or ought to have recovered the premises hereby vested as aforesaid, or any part thereof, or any estate, interest or demand, in or out of the same, the court wherein such suit or action shall be commenced or depending, shall and may adjudge or decree, that such person or persons shall recover against his Majesty, his heirs or successors, such sum or sums of money, as his or their estate, interest or demand in or about the premises hereby vested as aforesaid, shall by the same court be valued at and determined to amount unto, in full satisfaction for such estate, interest or demand; in making which valuation the said court shall estimate one full eighth part of the premises hereby vested as aforesaid, to be of the value of two thousand five

hundred pounds, and no more, and shall rate and ascertain the value of such estate, interest or demand, in proportion thereunto.

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SAVING and reserving always to the said John, Lord Carteret, his heirs, executors, administrators and Assigns, all such estate, right, title, interest, property, claim and demand whatsoever, in, unto or out of, one eighth part or share of the said Provinces or territories, with all and singular the rights, members and appurtenances thereof, and of, in and to one eighth part or share of all arrears of quit rents, and other rents, sum and sums of money, debts, duties, accounts, reckonings, claims and demands whatsoever, now due and oweing to the present Lords Proprietors of the said Provinces and territories, and all such other rights, titles, priviledges and powers whatsoever, as the said John, Lord Carteret, his heirs, executors or administrators now have or might have had or been entitled unto, in case this act, and the conveyance herein before directed to be made to his Majesty, his heirs and successors, or either of them, had not been, or should not be made.

Exception as to Lord Carteret,

SAVING also to all and every person and persons having or lawfully claiming any office or offices, place or places, employment or employments, by or under any grant or grants thereof made before the said first day of January, one thousand seven hundred and twenty-seven, under the common seal of the said Lords Proprietors, either in England or in the Provinces aforesaid, all such estate, right, title and interest in or to such office or offices, place and places, employment and employments, as they or any of them now have or might have had, or been entitled unto, in case this Act had never been made.

And others holding offices.

OF THE VARIOUS PROMULGATIONS OF MAGNA CARTA.

(BY THE EDITOR.)

The Charter of the first year of Henry 1st, A. D. 1101.
The Charter of King Stephen, confirming the preceding, A. D. 1136.
The confirmation of the Charter of Henry 1st, by Henry 2d, without date.
A Charter of the 16th. of King John. 1214.
Articuli Magne Carte libertatum, sub sigillo, Johannis regis. A. D. 1215.

Magna Carta Regis Johannis, 15 June, 1215, signed at Runimed, (datum per nostram manum in prato quod vocatur Runimed inter Windleshorham, et Staines, 15$^{mo.}$, Junii, Regni nostri 17$^{mo.}$, A. D. 1215.) This is the *Great Charter* of Runnimead or Runningmead, a meadow at the foot of Cooper's hill, between Staines and Windsor, about twenty miles from London, on the River Thames.

Magna Carta, 1 Henry 3. Nov. 12, 1216.
Magna Carta, Henry 3, A. D. 1217.
Carta de Foresta, 2 Henry 3d. 6th Nov. 1217.
Magna Carta, 9 Henry 3d. 11th Feb. 1224-5.
Carta de Foresta, same date.
Magna Carta, 36 Hen. 3.
Carta Confirmationis, 49 Henry 3.
Magna Carta, 25 Regis Edwardi primi, 12 Oct'r, 1297.
Carta Confirmationis, 25 Edw. 1st. 5 November, 1297.
Carta de Foresta, 28 Edw. 1. 28 March, 1300.
Carta Confirmationis, 29 Edw. 1. 14 Feb'ry, 1300-1.

All these are contained in the Folio Edition of *The Statutes of the Realm*, published in 1810 by the authority of Parliament, and to be found in the Library of the South Carolina College.

The first Parliamentary adoption at full length of any of these Charters, seems to have been the confirmation of the Magna Carta of 9th. Henry 3 by Edward the first in the 25th. year of his reign, 1297; which confirmation contains a recital of that Magna Carta. Hence, every known edition of the Statutes at Large, commences with this confirmation of the Charter of the 9th. Henry 3, which the Parliament of England adopted and enacted; none of the preceding Charters having been thus sanctioned at full length by a formal act of Parliament. Such was the case with the edition of Statutes at Large by Joseph Keble, Esq. adopted by the Legislature of South Carolina, in act of Assembly No. 333, A. D. 1712, which begins like those of Hawkins, Ruffhead, & Pickering, with the statutory confirmation and recital of 25 Edw. 1 (Stat. of the Realm, Introd. ch. 2. p. XXIX.) Pulton's edition, which preceded Keble, commences also with the Charter 9 Hen. 3. so that the Legislators of 1712 had no means

NOTES ON MAGNA CARTA.

of consulting any published edition of any Magna Carta, but that of 9 Hen. 3. The preceding editions of the Statutes at Large, containing no other. Nor do I know of any publication of the various Magna Carta's which preceded the confirmation above mentioned, in England so early as the year 1712. The great Charter of Runnymede, was therefore probably unknown unless by name to the Legislators of South Carolina, in 1712. But that Charter of Runnymede is the Magna Carta by way of eminence, and the subsequent editions omit many clauses of the original, for reasons which seem to be temporary. The notes in Rapin contain little that a Lawyer is not conversant with, I have therefore omitted them.

Hence, as the Magna Carta of King John, which the Barons forced from him on the 15th. June, 1215, at Runnymede, is the great Charter principally referred to by the English Historians, I have thought it expedient to insert at full length both that Charter, and the confirmation by Ed. 1. of the Magna Carta of 9th. Henry 3. For although the Legislature of South Carolina adopted of these Charters no more than the first, eighth, eighteenth, twenty eighth, twenty ninth, and thirty fourth chapters (or sections) of the Magna Carta of 9th. Henry 3d. I consider that this mutilation of a document so important in the legal and constitutional history of that country which has furnished so large a portion of our own jurisprudence, would be unsatisfactory to the great majority of the legal profession of the State.

Our American improvement of *written Constitutions*, is undoubtedly foundèd on this portion of the constitutional history of England; and it appeared to me, that an edition of the Laws under legislative authority, would well authorize the insertion at full length of these two editions of Magna Carta, especially as that of 9th. Hen. 3, contains variations from that of King John.

The statutory confirmation of 9th. Hen. 3 by 25 Edw. I have copied with the translation from the *Statutes of the Realm*, and Owen Ruffhead's edition of the Statutes at Large. Keble's is not to be found.

The Charter of King John, I have taken from Blackstone's Law-tracts, compared with the edition in the *Stat. of the Realm.* The translation I have adopted from Rapin's Hist. of England.

The following enumerations of the various confirmationss of the Charters, I have copied from Ruffhead's note to the Charter of 9. Hen. 3d. 52 Hen. 3, ch 5. 25 Edw. 1 stat. 1 ch 1-2-3-4. 28 Edw. 1 stat. 3 ch 1. 1 Edw. 3. stat. 2 ch 1. 2 Edw. 3 stat. 2 ch 1. 4 Edw. 3 ch 1. 5 Edw. 3 ch 1, 9. 10 Edw. 3 stat. 1 ch 1. 14 Edw. 3 stat. 1 ch. 1. 15 Edw. 3 stat. 1 ch. 1. 28 Edw. 3 ch 1. 31 Edw. 3 stat. 1 ch 1. 36 Edw. 3 stat 1 ch. 1. 37 Edw. 3 ch 1. 38 Edw. 3 stat 1 ch 1. 42 Edw. 3 ch 1. 45 Edw. 3 ch 1. 50 Edw. 3 ch 2. 1 Rich. 2 ch 1. 2 Rich. 2 stat. 2 ch 1. 5 Rich 2 stat. 1 ch 1. 6 Rich 2 stat. 1 ch 1. 7 Rich. 2 ch 2. 8 Rich 2 ch 1. 12 Rich. 2 ch 1. 1 Hen. 4 ch 1. 2 Hen. 4 ch 1. 7 Hen. 4 ch 1. 9 Hen. 4 ch 1. 13 Hen. 4 ch 1. 4 Hen. 5 ch 1. See also appendix No. 1. Grimke's Public Laws.

I insert of these, the Runnymede Charter of King John, as being the document of most historical note; and the 9. Hen. 3 confirmed by 25 Edw. 1. being that with which "The Statues at Large," usually commences, and which our act of 1712 has in part adopted.

In fact, all these documents are enacted by and included in the third and fifth sections of the act of Dec. 12, 1712, No 331 p 25 of Grimke's Public Laws, and p 98 of the same: which sections are as follow.

"Sect. 3. All the Statutes of the Kingdom of England relating to the allegiance of the people, to her present Majesty Queen Anne, and her

NOTES ON MAGNA CARTA.

lawful successors, and the several public oaths, and subscribing the tests required of the people of England in general by any of the said Statutes of the said Kingdom, *and also all such Statutes in the Kingdom of England as declare the rights and liberties of the subjects and enact the better securing of the same*, and also, so much of the said Statutes as relates to the above mentioned particulars of the allegiance of the people to their sovereign, the public oaths, and subscribing the tests required of them, *and the declaring and securing the rights and liberties of the subjects*, are hereby enacted and declared to extend to, and to be of full force in this province, as if particularly enumerated in this act."

"Sect. 5. So much of the *Common Law* of England is enacted and made of force, as is not altered by the above enumerated acts, or inconsistent with the particular constitutions, customs, and laws of this province," &c.

Under this authority, I have inserted in succession, as one class of Laws, the Magna Carta of King John; the Magna Carta of Henry 3; the confirmation thereof by 25 Edw. 1; the petition of right to King Charles the first, and his acquiesence therein; the Habeas Corpus act of Ch. 2d; and the Bill of Rights 1 William and Mary, sess. 2 ch 2.

CONTENTS OF THE *GREAT CHARTER* OF KING JOHN.

1215.

*The Sections marked * not included in the Magna Carta of Henry 3d.*

Preamble.

Section 1. The Church of England shall be free, and enjoy her whole rights and liberties inviolable.
Sec. 2. The underwritten liberties granted to all freemen and their heirs forever.
Sect. 3. Inheritances to be held by the antient relief.
Sect. 4. If the heir be a ward, he shall have his inheritance when he comes of age, without relief or fine.
Sect. 5. No waste shall be made by a guardian in ward's lands.
Sect. 6. Guardians shall maintain the inheritance of their wards.
Sect. 7. Heirs shall be married without disparagement.
Sect. 8. A widow shall have her marriage inheritance, and quarantine.
Sect. 9. A widow shall not be compelled to marry against her will.
Sect. 10. How distress shall be made, and sureties proceeded against.
Sect. 11. The same subject continued.
*Sect. 12. Of a Jew's debtor dying.
*Sect. 13. Of the widow and children of persons dying in debt to Jews.
*Sect. 14. Scutage and Aid not to be exacted without consent of the common council of the Kingdom, except in certain cases.
Sect. 15. The city of London shall have its ancient liberties and customs,
Sect. 16. And so shall all other towns.
*Sect. 17. Scutage to be assessed by consent of Archbishops, Bishops, Abbotts, Earls and great Barons of the realm.
*Sect. 18. Tenants in Capite to be summoned.
*Sect. 19. The business to proceed, though all who were summoned do not attend.
*Sect. 20. No leave to be granted in future to any one, to exact an Aid of his own free tenants; except reasonable aid in certain cases.
Sect. 21. None shall distrain for more service than is due.
Sect. 22. Common Pleas shall not follow the King's Court. Justices in Eyre to be appointed to hold Assizes.
Sect. 23. The causes that may not then be tried at the Assizes, shall be referred for trial to Knights and Freeholders.
Sect. 24. How freemen of all sorts shall be amerced.
Sect. 25. How villains shall be amerced.
Sect. 26. How Earls and Barons shall be amerced.
Sect. 27. How Ecclesiastics shall be amerced.
Sect. 28. Of Bridges over Rivers.

CONTENTS OF MAGNA CARTA.

Sect. 29. Who may not hold pleas of the Crown.
*Sect. 30. Counties, Hundreds, &c. shall stand at the old term.
Sect. 31. The King's debtor dying, the King shall be first paid.
Sect. 32. Of the distribution of intestate property.
Sect. 33. No corn or chattels to be taken without payment.
Sect. 34. Of distress on account of Castle Guard.
Sect. 35. Castle guard not due from persons employed in military service.
Sect. 36. The King's Sheriff or Bailiff, not to seize horses or carts for carriage.
Sect. 37. No man's timber to be taken for castles, &c. without his consent.
Sect. 38. Felons lands to be holden by the King only a year and a day.
Sect. 39. Wears in the Thames and the Midway to be demolished.
Sect. 40. A præcipe not issueable whereby a man shall lose his cause.
Sect. 41. Uniformity of measures and weights throughout the realm.
Sect. 42. Inquisition of life or member.
Sect. 43. Where there is tenure in soccage of the King, and tenure of another by Knight's service.
Sect. 44. No wardship shall accrue to the King by reason of Petit-Sergeantry.
Sect. 45. No wager of law to be demanded without a witness.
Sect. 46. Every freeman shall have trial by judgment of his peers or by law of the land.
Sect. 47. Right and Justice to be imparted without sale, denial, or delay.
Sect. 48. Safe conduct for ingress and egress to be allowed to merchants.
Sect. 49. Alien merchants to be dealt with, as English merchants are in the foreign country.
Sect. 50. Free ingress and egress of the realm to every one unless in case of war.
Sect. 51. Tenure of a barony coming to the King by escheate.
*Sect. 52. None but dwellers in the forest, or persons impleaded concerning the forest, shall be brought before the forest Courts.
*Sect. 53. No law officer shall be appointed but such as know the law.
Sect. 54. Founders of Abbies shall be entitled to the advowsons.
*Sect. 55. All woods and rivers that have been enclosed within the King's forest, shall be disforested.
*Sect. 56. All bad customs and abuses that have arisen concerniug forests, shall be inquired of and abolished.
*Sect. 57. English hostages to be delivered up.
*Sect. 58. Certain French foreigners to be sent away.
*Sect. 59. Also all hired foreign soldiers and cross bow men.
*Sect. 60. Those who have been unlawfully dispossessed shall be restored.
*Sect. 61. Delay in certain cases during the King's Croisade.
*Sect. 62. The same delay as to disforesting lands improperly inclosed.
Sect. 63. Appeal of death shall not be granted to a woman unless for her husband.
*Sect. 64. Fines imposed unjustly to be decided on by five and twenty Barons.
*Sect. 65. Disseisin of lands in England or Wales, to be judged of by the peers of the demandants of the same country with them, and by the law of England or Wales respectively.
*Sect. 66. The King to have delay as to new suits, till after his Croisade.
*Sect. 67. Welsh hostages to be dismissed.
*Sect. 68. Treaty to be entered into with the King of the Scots.
*Sect. 69. All persons to observe toward their dependants like customs and immunities with those now granted by the King.

*Sect. 70. The King guaranties to the barons this charter, on pain of distress of his lands and possessions.
*Sect. 71. The orders of the twenty-five Barons hereby appointed, to be obeyed.
*Sect. 72. All persons to be bound on oath to obey the said Barons in distraining the King's land for breach hereof.
*Sect. 73. The twenty five Barons may fill up vacancies.
*Sect. 74. The majority at a meeting of said Barons may act.
*Sect. 75. Nothing shall be done to invalidate these concessions.
*Sect. 76. Remission of disputes and offences.
*Sect. 77. Letters patent granted in further assurance of these concessions.
Sect. 78. The rights and liberties of the Church, and of the freemen of the realm, promised and declared.
Sect. 79. Sworn to by the King and the Barons, at Runningmede, between Windelsor and Staines, 15th day of June, 17th year of his reign.

MAGNA CARTA REGIS JOHANNIS.

XVmo DIE JUNII, REGNI REGIS XVIImo. MCCXV.

THE MAGNA CARTA OF KING JOHN,

15TH DAY OF JUNE, IN THE 17TH YEAR OF THE KING'S REIGN, A. D. 1215.

JOHANNES, dei gratia rex Anglie, dominus Hibernie, dux Normannie, Aquitanie, et comes Andegavie, archiepiscopis, episcopis, abbatibus, comitibus, baronibus, justiciaris, forestariis, vice-comitibus, prepositis, ministris, et omnibus ballivis, et fidelibus suis, salutem. Sciatis nos intuitu dei et pro salute anime nostre et omnium antecessorum et heredum nostrorum, ad honorem Dei, et exaltationem sancte ecclesie, et emendationem regni nostri, per consilium venerabilium patrum nostrorum, Stephani Cantuariensis archiepiscopi, totius Anglie primatis, et sancte Romane ecclesie Cardinalis, Henrici Dubliniensis archiepiscopi, Willielmi Londoniensis, Petri Wintoniensis, Jocelini Bathoniensis et Glaston, Hugonis Lincolniensis, Walteri Wygorniensis, Willielmi Coventrensis, et Benedicti Roffensis, episcoporum; magistri Pandulfi domini pape subdiaconi et familiaris; fratris Eymerici magistri militie Templi in Anglia; et nobilium virorum Willielmi Marescalli comitis Penbrok, Willielmi comitis Sarum, Willielmi comitis Warennie, Willielmi comitis Arundell, Alani de Galwega, constabularii Scottie, Warini filii Geroldi, Petri filii Hereberti, Huberti de Burgo senescalli Pictavie, Hugonis de Neville, Matthei filii Hereberti, Thome Basset,

JOHN, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitain, and Earl of Anjou: To the Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries of the Forests, Sheriffs, Governors, Officers, and to all Bailiffs, and other his faithful subjects, greeting. Know ye, That we, in the presence of God, and for the health of our soul, and of the souls of our ancestors and heirs, and to the honour of God, and the exaltation of Holy Church, and amendment of our Kingdom, by Advice of our venerable Fathers, Stephen, Archbishop of Canterbury, Primate of all England, and Cardinal of the Holy Roman Church; Henry, Archbishop of Dublin, William, Bishop of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops; and Master Pandulph, the Pope's subdeacon and ancient servant, Brother Aymerick, Master of the Temple in England, and the Noble Persons, William Marescall, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundel, Alan de Galoway, Constable of Scotland, Warin Fitz Gerald, Peter Fitz Herebert, and Hubert de Burghe, Senechal of Poictou, Hugo de Nevill,

Alani Basset, Philippi de Albiniaco, Roberti de Roppele, Johannis Marescalli, Johannis filii Hugonis, et aliorum fidelium nostrorum. In primis concessise Deo, et hac presente charta nostra confirmasse, pro nobis et heredibus nostris in perpetuum,

Matthew Fitz Herebert, Thomas Basset, Alan Basset, Philip de Albine, Robert de Roppele, John Marescall, John Fitz Hugh, and others our Liegemen; have in the first place granted to God, and by this our present Charter, confirmed for us and our heirs forever,

I.

Quod Anglicana ecclesia libera sit, et habeat jura sua integra, et libertates suas illesas, et ita volumus observari, quod apparent ex eo, quod libertatem electionum que maxima et magis necessaria reputatur ecclesie Anglicane, mera et spontanea voluntate, ante discordiam inter nos et barones nostros motam, concessimus et carta nostra confirmavimus, et eam obtinuimus a domino papa Innocentio tertio confirmari; quam et nos observabimus, et ab heredibus nostris in perpetuum bona fide volumus observari.

I.

That the Church of England shall be free, and enjoy her whole rights and liberties inviolable. And we will have them so to be observed; which appears from hence that the freedom of elections, which was reckoned most necessary for the Church of England, of our own free will and pleasure, we have granted and confirmed by our Charter, and obtained the confirmation of from Pope Innocent the Third, before the discord between us and our Barons; which Charter we shall observe, and do will it to be faitfully observed by our heirs forever.

II.

Concessimus etiam omnibus liberis hominibus regni nostri pro nobis et heredibus nostris in perpetuum, omnes libertates subscriptas, habendas et tenendas eis et heredibus suis, de nobis et heredibus nostris.

II.

We have also granted to all the freemen of our Kingdom, for us and our heirs forever, all the underwritten Liberties, to have and to hold to them and their heirs, of us and our heirs.

III.

Si quis comitum vel baronum nostrorum, sive aliorum tenentium de nobis in capite per servitium militare, mortuus fuerit, et cum decesserit heres suus plene etatis fuerit, et relevium debeat, habeat hereditatem suam per antiquum relevium, scillicet heres vel heredis comitis de baronia comitis integra per centum libras. Heres vel heredes baronis de baronia integra per centum libras. Heres vel heredes militis de feodo militis integro, per centum solidos ad plus: et qui minus debuerit, minus det, secundum antiquam consuetudinem feodorum.

III.

If any of our Earls, or Barons, or others who hold of us in chief, by military service, shall die, and at the time of his death his heir shall be of full age, and owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an Earl, for a whole Earl's barony, by a hundred pounds; the heir or heirs of a Baron, for a whole barony, by a hundred pounds; the heir or heirs of a Knight, for a whole Knight's fee, by a hundred shillings at most; and he that oweth less shall give less, according to the ancient custom of fees.

MAGNA CARTA OF KING JOHN.

IV.

Si autem heres alicujus talium fuerit infra etatem, et fuerit in custodia, cum ad etatem pervenerit, habeat hereditatem suam sine relevio et sine fine.

IV.

But if the heir of any such shall be under age, and shall be in Ward, when he comes of age he shall have his inheritance without relief or without fine.

V.

Custos terre hujusmodi heredis qui infra etatem fuerit, non capiat de terra heredis nisi rationabiles exitus, et rationabiles consuetudines, et rationabilia servitia, et hec sine destructione et vasto hominum vel rerum. Et si nos commisserimus custodiam alicujus talis terre vicecomiti vel alicui alii qui de exitibus illius nobis respondere debeat, et ille destructionem de custodia fecerit vel vastum, nos ab illo capiemus emendam, et terra comittatur duobus legalibus et discretis hominibus de feodo illo, qui de exitibus respondeant nobis vel ei cui nos assignaverimus. Et si dederimus vel vendiderimus alicui custodiam alicujus talis terre, et ille destructionem inde fecerit vel vastum, amittat ipsam custodiam, et tradatur duobus discretis et legalibus hominibus de feodo illo, qui similiter nobis respondeant, sicut predictum est.

V.

The Warden of the land of such heir, who shall be under age, shall take of the land of such heir only reasonable issues, reasonable customs, and reasonable services; and that without destruction or waste of the men or things; and if we shall commit the guardianship of those lands to the Sheriff, or any other who is answerable to us for the issues of the land, and if he shall make destruction and waste upon the Ward lands, we will compel him to give satisfaction, and the land shall be committed to two lawful and discreet tenants of that fee, who shall be answerable for the issues to us, or to him whom we shall assign. And if we shall give or sell the Wardship of any such lands to any one, and he makes destruction or waste upon them, he shall lose the Wardship, which shall be committed to two lawful and discreet tenants of that fee, who shall in like manner be answerable to us, as hath been said.

VI.

Custos autem quamdiu custodiam terre habueret, sustentet domos, parcos, vivaria, stagna, molendina, et cetera ad terram illam pertinentia, de exitibus terre ejusdem, et reddat heredi cum et plenam etatem pervenerit, terram suam totam instauratam de carrucis et wainnagiis secundam quod tempus wainnagii exigit, et exitus terre rationabiliter poterant sustinere.

VI.

But the Warden, so long as he shall have the Wardship of the land, shall keep up and maintain the houses, parks, warrens, ponds, mills and other things pertaining to the land, out of the issues of the same land; and shall restore to the heir, when he comes of full age, his whole land stocked with ploughs and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

VII.

Heredes maritentur absque disparagatione; ita tamen quod antequam contrahatur matrimonium, ostendatur propinquis de consanguinitate ipsius heredis.

VII.

Heirs shall be married without disparagement, so as that before matrimony shall be contracted, those who are nearest to the heir in blood shall be made acquainted with it.

VIII.

Vidua post mortem mariti sui, statim et sine difficultate habeat maritagium et hereditatem suam, nec aliquid det pro dote sua vel pro maritagio suo, vel hereditate sua, quam hereditatem maritus suus et ipsa tenuerint die obitus ipsius mariti; et maneat in domo mariti sui per quadraginta dies post mortem ipsius, infra quos, assignetur ei dos sua.

VIII.

A widow, after the death of her husband, shall forthwith, and without any difficulty, have her marriage and her inheritance; nor shall she give anything for her dower or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the capital messuage or mansion house of her husband, forty days after his death, within which term her dower shall be assigned.

IX.

Nulla vidua distringatur ad se maritandam, dum voluerit vivere sine marito. Ita tamen quod securitatem faciat quod se non maritabit sine assensu nostro, si de nobis tenuerit, vel sine assensu domini sui de quo tenuerit, si de alio tenuerit.

IX.

No widow shall be distrained to marry herself, so long as she has a mind to live without a husband. But yet she shall give security that she will not marry without our assent, if she holds of us, or without the consent of the Lord of whom she holds, if she holds of another.

X.

Nec nos, nec ballivi nostri, seisiemus terram aliquam nec redditum pro debito aliquo, quamdiu catalla debitoris sufficiunt ad debitum reddendum; Nec pleggii ipsius debitoris distringantur, quamdiu ipse capitalis debitor sufficit ad solutionem debiti.

X.

Neither we nor our Bailiffs shall seize any land or rent for any debt, so long as there shall be chattles of the debtor's upon the premises, sufficient to pay the debt. Nor shall the sureties of the debtor be distrained, so long as the principal debtor is sufficient for the payment of the debt.

XI.

Et si capitalis debitor deficerit in solutione debiti, non habens unde solvat, pleggii respondeant de debito, et si voluerint, habeant terras et redditus debitoris, donec sit eis satisfactum de debito quod ante pro eo solverint, nisi capitalis debitor

XI.

And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt; and if they will, they shall have the lands and rents of the debtor, until they shall be satisfied for the debt which

monstraverit se esse quietum inde versus eosdem pleggios.

they paid for him; unless the principal debtor can show himself acquitted thereof, against the said sureties.

XII.

Si quis mutuo ceperit aliquid a Judeis, plus vel minus, et moriatur antiquam debitum illud solvatur, debitum non usuret quamdiu heres fuerit infra etatem, de quocumque teneat; et si debitum illud inciderit in manus nostras, nos non capiemus nisi catallum contentum in charta.

XII.

If any one have borrowed any thing of the Jews, more or less, and dies before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold. And if the debt falls into our hands, we will take only the chattel mentioned in the charter or instrument.

XIII.

Et si quis moriatur, et debitum debeat Judeis, uxor ejus habeat dotem suam, et nichil reddat de debito illo; et si liberi ipsius defuncti, qui fuerint infra etatem, remanserint, provideantur iis necessaria secundum tenementum quod fuerat defuncti; et de residuo solvatur debitum, salvo servitio dominorum. Simili modo fiat de debitis que debentur aliis quam Judeis.

XIII.

And if any one shall die indebted to the Jews, his wife shall have her dower, and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them according to the Tenement (or real estate) of the deceased; and out of the residue the debt shall be paid; saving, however, the service of the Lords. In like manner let it be with debts due to other persons than the Jews.

XIV.

Nullum scutagium vel auxilium ponatur in regno nostro nisi per Commune Consilium regni nostri, nisi ad corpus nostrum redimendum; et primogenitum filium nostrum militem faciendum; et ad filiam primogenitam nostram semel maritandam; et ad hec non fiat nisi rationabile auxilium.

XIV.

No scutage or aid shall be imposed in our Kingdom, unless by the Common Council of our Kingdom, except to redeem our person, and make our eldest son a Knight, and once to marry our eldest daughter; and for this there shall only be paid a reasonable Aid.

XV.

Simili modo fiat de auxiliis de civitate London; et civitas London habeat omnes antiquas libertates et liberas consuetudines suas tam per terras quam per aquas.

XV.

In like manner it shall be concerning the Aids of the City of London; and the City of London shall have all its ancient liberties and free customs, as well by land as by water.

XVI.

Preterea volumus et concedimus, quod omnes alie civitates, et burgi,

XVI.

Furthermore, we will and grant, that all other cities, and boroughs,

et ville, et portus, habeant omnes libertates et liberas consuetudines suas, et ad habendum Commune Consilium regni de auxilio assidendo aliter quam in tribus casis predictis.

and towns, and ports, shall have all their liberties and free customs; and shall have the Common Council of the Kingdom concerning the assessment of their Aids, except in the three cases aforesaid.

XVII.

Vel de scutagio assidendo, summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones sigillatim per literas nostras.

XVII.

And for the assessing of scutages we shall cause to be summoned the Archbishops, Bishops, Abbots, Earls, and great Barons of the Realm, singly by our letters.

XVIII.

Et preterea faciemus summoneri in generali per vice-comites et ballivos nostros, omnes illos qui de nobis tenent in capite, ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum, et in omnibus litteris illius summonitionis causam summonitionis exprimemus.

XVIII.

And furthermore we shall cause to be summoned in general by our sheriffs and bailiffs, all others who hold of us in chief, at a certain day, that is to say forty days before the meeting, at least, to a certain place; and in all letters of such summons we will declare the cause of the summons.

XIX.

Et sic facta summonitione negotium ad diem assignatum procedat secundum consilium illorum qui presentes fuerint, quamvis non omnes summoniti venerint.

XIX.

And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

XX.

Nos non concedemus de cetero alicui quod capiet auxilium de liberis hominibus suis, nisi ad corpus suum redimendum; et ad faciendum primogenitum filium suum militem; et ad primogenitam filiam suam semel maritandam; et ad hec non fiat nisi rationabile anxilium.

XX.

We will not for the future grant to any one, that he may take Aid from his own free tenants, unless to redeem his body, and to make his eldest son a Knight, and once to marry his eldest daughter; and for this there shall only be paid a reasonable Aid.

XXI.

Nullus distringatur ad faciendum majus servitium de feodo militis, nec de alio libero tenemento quam inde debetur.

XXI.

No man shall be distrained to perform more service for a Knight's Fee, or other Free Tenement, than is due from thence.

MAGNA CARTA OF KING JOHN.

XXII.

Communia placita non sequantur curiam nostram, sed teneantur in aliquo loco certo. Recognitiones de nova disseisina, de morte antecessoris, et de ultima presentatione non capiantur nisi in suis comitatibus, et hoc modo: nos, vel si extra regnum fuerimus, capitalis justiciarius noster, mittemus duos justiciarios per unumquemque comitatum, per quatuor vices in anno: qui cum quatuor militibus cujus libet comitatus electis per comitatum, capiant in comitatu et in die et loco comitatus assisas predictas.

XXII.

Common Pleas shall not follow our Court, but shall be holden in some certain place. Tryals upon the Writs of Novel Disseisin, and of Mort d'Ancestor, and of Darreine Presentment, shall be taken but in their proper counties, and after this manner: We, or if we should be out of the Realm, our Chief Justiciary, shall send two Justiciaries through every county four times a year; who with the four Knights chosen out of every Shire, by the People, shall hold the said Assizes in the County, on the day and at the place appointed.

XXIII.

Et si, in die comitatus, assise predicte capi non possint, tot milites et libere tenentes remaneant de illis qui interfuerint comitatui die illo, per quos possint judicia sufficienter fieri, secundum quod negotium fuerit majus vel minus.

XXIII.

And if any Matters cannot be determined on the day appointed to hold the Assizes in each County, so many of the Knights and Freeholders as have been at the Assizes aforesaid, shall be appointed to decide them, as is necessary, according as there is more or less business.

XXIV.

Liber homo non amercietur pro parvo delicto, nisi secundum modum delicti; et pro magno delicto amercietur, secundem magnitudinem delicti; salvo contenemento suo; et mercator eodem modo, salva mercandisa sua.

XXIV.

A freeman shall not be amerced for a small fault, but according to the degree of the fault; and for a great crime in proportion to the heinousness of it: Saving to him his contenement, and after the same manner a merchant, saving to him his merchandize.

XXV.

Et villanus eodem modo amercietur, salvo wainnagio suo, si inciderint in misericordiam nostram; et nulla dictarum misericordiarum ponatur nisi per sacramentum proborum hominum de visneto.

XXV.

And a villain shall be amerced after the same manner, saving to him his Wainage, if he falls under our mercy; and none of the aforesaid Amerciaments shall be assessed but by the Oath of honest men of the neighbourhood.

XXVI.

Comites et barones non amercientur, nisi per pares suos, et non nisi secundum modum delicti.

XXVI.

Earls and Barons shall not be amerced but by their Peers, and according to the quality of the offence.

XXVII.

Nullus clericus amercietur de laico tenemento suo, nisi secundum modum aliorum predictorum, et non secundum quantitatem beneficii sui ecclesiastici.

XXVII.

No ecclesiastical person shall be amerced, but according to the proportion aforesaid, and not according to the value of his Ecclesiastical benefice.

XXVIII.

Nec villa, nec homo, distringatur facere pontes ad riparias, nisi qui ab antiquo et de jure facere debent.

XXVIII.

Neither a town, nor any person, shall be distrained to make bridges over rivers, unless that anciently and of right they are bound to do it.

XXIX.

Nullus vice-comes, constabularius, coronatores, vel alii ballivi nostri, teneant placita corone nostre.

XXIX.

No Sheriff, Constable, Coroners, or other our Bailiffs, shall hold Pleas of the Crown.

XXX.

Omnes comitatus, hundredi, wapentakia, et trethingi, sint ad antiquas firmas, absque ullo incremento, exceptis dominicis maneriis nostris.

XXX.

All Counties, Hundreds, Wapentakes, and Trethings, shall stand at the old Ferm, without any increase, except in our Demesne Lands.

XXXI.

Si aliquis tenens de nobis laicum feodum, moriatur, et vice-comes vel ballivus noster ostendat literas patentes nostras de summonitione nostra de debito quod defunctus nobis debuit; liceat vice-comiti vel ballivo nostro attachiare et inbreviare catalla defuncti inventa in laico feodo, ad valentiam illius debiti, per visum legalium hominum, ita tamen quod nichil amoveatur inde, donec persolvatur nobis debitum quod clarum fuerit; et residuum relinquatur executoribus ad faciendum testamentum defuncti; et si nichil nobis debeatur ab ipso, omnia catalla cedant defuncto, salvis uxori ipsius et pueris rationabilibus partibus suis.

XXXI.

If any one that holds of us a Lay Fee, dies, and the sheriff or our Bailiff show our Letters patents of Summons concerning the debt due to us from the deceased; it shall be lawful for the Sheriff or our Bailiff to attach and register the Chattles of the deceased found upon his Lay Fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole debt be paid; and the rest shall be left to the Executors to fulfil the Will of the deceased; and if there be nothing due from him to us, all the Chattles shall remain to the deceased, saving to his Wife and Children their reasonable shares.

XXXII.

Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum, parentum, et amicorum suorum, per visum ecclesie

XXXII.

If any Freeman dies Intestate, his Chattles shall be distributed by the hands of his nearest Relations and Friends, by the view of the

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distribuantur; salvis unicuique debitis que defunctus ei debebat.

Church, saving to every one his debts which the Deceased owed.

XXXIII.

Nullus constabularius vel alius ballivus noster capiat blada vel alia catalla alicujus, nisi statim inde reddat denarios, aut respectum inde habere possit de voluntate venditoris.

XXXIII.

No Constable or Bailiff of ours shall take Corn or other Chattles of any man, unless he presently gives him money for it, or hath respite of Payment from the seller.

XXXIV.

Nullus constabularius distringat aliquem militem ad dandum denarios pro custodia castri, si facere voluerit custodiam illam in propria persona sua, vel per alium probum hominem, si ipse eam facere non possit propter rationabilem causam.

XXXIV.

No Constable shall distrain any Knight to give money for Castle Guard, if he himself shall do it in his own Person, or by another able man, in case he shall be hindered by any reasonable cause.

XXXV.

Et si nos duxerimus, vel miserimus eum in exercitum, erit quietus de custodia secundum quantitatem temporis quo per nos fuerit in exercitu.

XXXV.

And if we shall lead him, or if we shall send him into the Army, he shall be free from Castle Guard, for the time he shall be in the Army by our command.

XXXVI.

Nullus vice-comes vel ballivus noster, vel alius aliquis, capiat equos vel caretas alicujus liberi hominis pro cariagio faciendo nisi, de voluntate ipsius liberi hominis.

XXXVI.

No Sheriff or Bailiff of ours, or any other, shall take Horses or Carts of any for Carriage.

XXXVII.

Nec nos, nec ballivi nostri, capiemas alienum boscum ad castra vel alia agenda nostra, nisi per voluntatem ipsius cujus boscus ille fuerit.

XXXVII.

Neither shall we or our Officers or others, take any man's Timber for our Castles, or other uses, unless by the consent of the owner of the Timber.

XXXVIII.

Nos non tenebimus terras illorum qui convicti fuerint de felonia, nisi per unam annum et unum diem, et tunc reddantur terre dominis feodorum.

XXXVIII.

We will retain the Lands of those that are convicted of Felony, but one Year and a Day, and then they shall be delivered to the Lord of the Fee.

XXXIX.

Omnes Kydelli de cetero deponantur penitus de Thamisia et de Medewaye, et per totam Angliam, nisi per costeram maris.

XXXIX.

All Wears for the time to come shall be demolished in the rivers of Thames and Medway, and throughout all England, except upon the Sea Coast.

XL.

Breve quod vocatur precipe, de cetero non fiat alicui de aliquo tenemento, unde liber homo amittere possit curiam suum.

XL.

The Writ which is called Præcipe, shall not for the future, be granted to any one of any Tenement, whereby a Free man may lose his cause.

XLI.

Una mensura vini sit per totum regnum nostrum, et una mensura, cervisie et una mensura bladi, scilicet quarterium Londoniense, et una latitudo pannorum tinctorum et russettorum et halbergettorum, scilicet due ulne infra listas; de ponderibus autem sit ut de mensuris.

XLI.

There shall be one Measure of Wine, and one of Ale, through our whole Realm, and one Measure of Corn, that is to say the London Quarter; and one Breadth of Dyed Cloth and Russets and Haberjects, that is to say, Two Ells within the List; and the Weights shall be as the Measures.

XLII.

Nichil detur vel capiatur de cetero pro brevi inquisitionis de vita vel membris, sed gratis concedatur, et non negetur.

XLII.

From henceforward nothing shall be given or taken for a Writ of Inquisition, from him that desires an Inquisition of Life or Limb, but shall be granted gratis, and not denied.

XLIII.

Si aliquis teneat de nobis per firmi feodam, vel per sokagium, vel per burgagium, et de alio terram teneat per servitium militare, nos non habebimus custodiam heredis nec terre sue qui est de feodi alterius, occasione illius feodifirme, vel sokagii, vel burgagii, nec habebimus custodiam illius feodifirme, vel sokagii, vel burgagii, nisi ipsa feodifirma debeat servitium militare.

XLIII.

If any one holds of us by Fee Farm, or Socage, or Burgage, and holds Lands of another by Military service, we will not have the Wardship of the Heir or Land, which belongs to another man's Fee, by reason of what he holds of us by Fee Farm, Socage, or Burgage: Nor will we have the Wardship of the Fee Farm, Socage, or Burgage, unless the Fee Farm is bound to perform Military service.

XLIV.

Nos non habebimus custodiam

XLIV.

We will not have the Wardship

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heredis vel terre alicujus quam tenet de alio per servitium militare, occasione alicujus parve sergenterie, quam tenet de nobis per servitium reddendi nobis cultellos, vel sagittas, vel hujus modi.

of an Heir, nor of any Land which he holds of another by Military service, by reason of any Petit-Serjeanty he holds of us, as by the service of giving us Arrows, Daggers, or the like.

XLV.

Nullus ballivus ponat de cetero aliquem ad legem, simplici loquela sua, sine testibus fidelibus ad hoc inductis.

XLV.

No Bailiff for the future shall put any man to his Law, upon his single accusation, without credible witnesses produced to prove it.

XLVI.

Nullus liber homo capiatur, vel imprisonetur, aut disseisietur, aut utlegatur, ant exuletur, aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terre.

XLVI.

No Freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, or any ways destroyed; nor will we pass upon him, or commit him to prison, unless by the legal Judgement of his Peers, or unless by the Law of the Land.

XLVII.

Nulli vendemus, nulli negabimus, aut differemus rectum aut justiciam.

XLVII.

We will sell to no man, we will deny no man, or defer Right or Justice.

XLVIII.

Omnes mercatores habeant salvum et securum exire de Anglia, et venire in Angliam, et morari et ire per Angliam, tam per terram quam per aquam, ad emendum et vendendum, sine omnibus malis toltis, per antiquas et rectas consuetudines, preter quam in tempore guerre, et si sint de terra contra nos guerrina.

XLVIII.

All Merchants shall have safe and secure conduct to go out of and to come into England, and to stay there, and to pass, as well by Land as by Water, to buy and sell by the antient and allowed customs, without any evil Toll, except in time of War, or when they shall be of any Nation in War with us.

XLIX.

Et si tales inveniantur in terra nostra in principio guerre, attachientur sine dampno corporum et rerum, donec sciatur a nobis vel capitali Justiciario nostro quomodo Mercatores terre nostri tractentur qui tunc invenientur in terra contra nos guerrina; et si nostri salvi sint ibi, alii salvi sint in terra nostra.

XLIX.

And if there shall be found any such in our Land in the beginning or a War, they shall be attached without damage to their bodies or goods, until it may be known unto us or our Chief Justiciary, how our Merchants be treated in the Nation at War with us; and if ours be safe there, theirs shall be safe in our Lands.

L.

Liceat unicuique de cetero exire de regno nostro et redire, salve et secure per terram et per aquam, salva fide nostra, nisi tempore guerre per aliquod breve tempus propter communem utilitatem regni, exceptis imprisonatis et utlagatis, secundum legem regni, et gente de terra, contra nos guerrina, et Mercatoribus de quibus fiat sicut predictum est.

L.

It shall be lawfull for the time to come, for any one to go out of our Kingdom, and return safely and securely by Land or by Water, saving his Allegiance to us; unless in time of War by some short space for the benefit of the Kingdom, except Prisoners and Outlaws according to the Law of the Land, and people in War with us, and Merchants who shall be is such condition as is above mentioned.

LI.

Si quis tenuerit de aliqua Escaeta. sicut de honore Walingeford, Notingeham, Bononia, Laincastrie, vel de aliis Escaetis que sunt in manu nostra, et sunt Baronie, et obierit, heres ejus non det aliud Relevium, nec faciat nobis aliud Servitium quam fecerit Baroni, si Baronia illa esset in manu Baronis, et nos eodem modo eam tenebimus quo Baro eam tenuit.

LI.

If any man holds of any Escheat, as of the Honour of Wallingford, Nottingham, Bologne, Lancaster, or of other Escheats which are in our hands, and are Baronies, and dies, his heir shall not give any other relief, or perform any other service to us than he would to the Baron, if the Barony were in possession of the Baron; we will hold it after the same manner the Baron held it.

LII.

Homines qui manent extra forestam, non veniant de cetero coram justiciariis nostris de Foresta per communes summonitiones, nisi sint in placito, vel Pleggii alicujus vel aliquorum qui attachiati sint pro foresta.

LII.

Those men who dwell without the forest, from henceforth shall not come before our Justiciaries of the forest upon summons, but such as are impleaded or are pledges for any that were atached for something concerning the Forest.

LIII.

Nos non faciemus Justiciarios, Constabularios, Vice-comites, vel Ballivos nisi de talibus qui sciant legem regni, et eam beue velint observare.

LIII.

We will not make any Justiciaries, Constables, Bailiffs or Sheriffs, but what are knowing in the Laws of the Realm, and are disposed duly to observe it.

LIV.

Omnes Barones qui fundaverunt Abbatias unde habent cartas regum Anglie, vel antiquam tenuram, habeunt earum custodiam, cum vacaverint, sicut habere debent.

LIV.

All Barons who are founders of Abbies, and have Charters of the Kings of England for the Advowson, or are entitled to it by antient tenure, may have the custody of them, when void, as they ought to have.

LV.

Omnes Foreste que aforestate sunt tempore nostro, statim disafforestentur; et ita fiat de Ripariis que per nos tempore nostro posite sunt in defenso.

LV.

All woods that have been taken into the forests, in our own time, shall forthwith be laid out again, and the like shall be done with the rivers that have been taken or fenced in by us, during our reign.

LVI.

Omnes male consuetudines de Forestis, Warrennis, et de Forestariis et Warennariis, Vice-comitibus et eorum ministris, Ripariis et earum custodibus, statim inquirantur in quolibet comitatu per duodecim milites juratos de eódem Comitatu, qui debent eligi per probos homines ejusdem comitatus; et infra quadraginta dies post inquisitionem factam, penitus, ita quod nunquam revocentur, deleantur.

LVI.

All evil customs concerning Forests, Warrens, and Forresters, Warreners, Sheriffs and their Officers, Rivers, and their Keepers, shall forthwith be enquired into in each County, by twelve Knights of the same Shire, chosen by the most creditable Persons in the same County, and upon oath; and within forty days after the said Inquest, be utterly abolished, so as never to be restored.

LVII.

Omnes obsides et cartas statim reddemus que liberate fuerunt nobis ab Anglicis in securitatem pacis, vel fidelis servitii.

LVII.

We will immediately give up all hostages and engagements, delivered unto us by our English subjects as securities for their keeping the peace, and yielding us faithful service.

LVIII.

Nos amovebimus penitus de balliviis parentes Gerardi de Athyes, quod de cetero nullam habeant balliviam in Anglia; Engelardum de Cygony, Andream, Petrum, et Gyonem de Cancell, Gyonem de Cygony, Galfridum de Martini, et fratres ejus, Philippum Markum et fratres ejus, et Galfridum nepotem ejus, et totam sequelam eorundem.

LVIII.

We will entirely remove from our Bailiwicks the relations of Gerard de Athyes, so as that for the future they shall have no Bailiwick in England. We will also remove Engelard de Cygony, Andrew, Peter, and Gyon de Canceles, Gyon de Cygony, Geoffry de Martyn and his brothers, Philip Mark and his brothers, and his nephew Geoffrey, and their whole Retinue.

LIX.

Et statim post pacis reformationem, amovebimus de regno omnes alienigenas Milites, Balistiarios, servientes stipendiarios, qui venerint cum equis et armis ad nocumentum regni.

LIX.

And as soon as Peace is restored, we will send out of the kingdom all foreign soldiers, crossbowmen, and stipendiaries, who are come with horses and arms, to the injury of our people.

LX.

Si qui fuerit disseisitus,* vel elongatus per nos, sine legali judicio parium suorum, de terris, castellis, libertatibus, vel jure suo, statim ea ei restituemus; et si contentio super hoc orta fuerit, tunc inde fiat per judicium viginti quinque Baronum, de quibus fit mentio inferius in securitate pacis.

LX.

If any one hath been dispossessed, or deprived by us without the legal judgment of his Peers, of his lands, castles, liberties or right, we will forthwith restore them to him; and if any dispute arises upon this head, let the matter be decided by the five and twenty Barons hereafter mentioned, for the preservation of the peace.

LXI.

De omnibus autem illis de quibus aliquis disseisitus fuerit, vel elongatus, sine legali judicio parium suorum, per Henricum regem patrem nostrum, vel per Ricardum regem fratrem nostrum, que in manu nostra habemus, vel que alii tenent, que nos oporteat warantizare, respectum habebimus usque ad communem terminum Cruce-signatorum. Exceptis illis de quibus placitum motum fuit, vel inquisitio facta per preceptum nostrum, ante susceptionem crucis nostre; cum autem redierimus de peregrinatione nostra, vel si forte remanserimus a peregrinatione nostra, statim inde plenam justiciam exhibebimus.

LXI.

As for all those things, of which any person has without the legal judgment of his Peers, been dispossessed or deprived, either by King Henry our Father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the Term usually allowed the Croises; excepting those things about which there is a suit depending, or whereof an Inquest hath been made by our Order, before we undertook the Crusade. But when we return from our Pilgrimmage, or if we do not perform it, we will immediately cause full justice to be administered therein.

LXII.

Eundem autem respectum habebimus, de forestis deafforestandis, quas Henricus pater noster, vel Ricardus, frater noster afforestaverunt; et de custodiis terrarum que sunt de alieno feodo, cujusmodi custodias hucusque habuimus, occasione feodi quod aliquis de nobis tenuit per servitium militare, et de Abbatiis que fundate fuerint in feodo alterius quam nostro, in quibus dominus feodi dixerit se jus habere; et cum redierimus, vel si remanserimus a peregrinatione nostra, super hiis conquerentibus plenam justiciam statim exhibebimus.

LXII.

The same respite we shall have for disafforesting the Forests, which Henry our Father, or our brother Richard have afforested; and for the Wardship of lands which are in another's fee, in the same manner as we have hitherto enjoyed these Wardships, by reason of a fee held of us by Knight's service, and for the Abbies founded in any other fee than our own, in which the Lord of the fee claims a right: And when we return from our Pilgrimmage, or if we should not perform it, we will immediately do full justice to all the complainants in this behalf.

* In the original it is sometimes *dissaisitus*.

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LXIII.

Nullus capiatur nec imprisonetur, propter appellum femine, de morte alterius quam viri sui.

LXIII.

No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other man than her husband.

LXIV.

Omnes fines qui injuste et contra legem terre facti sunt nobiscum, et omnia amerciamenta facta injuste et contra legem terre, omnino condonentur, vel fiat inde per judicium viginti quinque Baronum de quibus fit mentio inferius in securitate pacis, vel per judicium majoris partis eorundem, una cum predicto Stephano Cantuariensi Archiepiscopo, si interesse poterit, et aliis quos secum ad hoc vocare voluerit; et si interesse non poterit, nihilominus procedat negotium sine eo. Ita quod si aliquis vel aliqui, de predictis viginti quinque Baronibus, fuerint in simili querela, amoveantur, quantum ad hoc judicium, et alii loco illorum per residuos de eisdem viginti quinque tantum ad hoc faciendum electi, et jurati substituantur.

LXIV.

All unjust and illegal fines, and all Amerciaments, imposed unjustly and contrary to the law of the land, shall be entirely forgiven, or else left to the decision of the five and twenty Barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the foresaid Stephen Archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; And if he cannot be present, the business shall nevertheless go on without him; but so that, if one or more of the five and twenty Barons aforesaid be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room out of the said five and twenty, and sworn by the rest to decide that matter.

LXV.

Si nos disseisivimus, vel elongavimus Walenses de terris, vel libertatibus, vel rebus aliis, sine legali judicio parium suorum, eis statim, reddantur; et si contentio super hoc orta fuerit, tunc inde fiat in Marcia per judicium parium suorum; de tenementis Anglie, secundem legem Anglie; de tenementis Wallie, secundem legem Wallie; de tenementis Marchie, secundem legem Marchie; idem facient Wallensis nobis et nostris.

LXV.

If we have disseised or dispossessed the Welsh, of any Lands, liberties, or other things, without the legal Judgment of their Peers, they shall be immediately restored to them. And if any dispute arises upon this head, the matter shall be determined in the Marches, by the Judgment of their Peers; For tenements in England, according to the law of England; for tenements in Wales, according to the law of Wales; for tenements in the Marches, according to the law of the Marches; The same shall the Welsh do to us and our subjects.

LXVI.

De omnibus autem illis de quibus aliquis Wallensium disseisitus

LXVI.

As for all those things, of which any Welshmen hath, without the

fuerit, vel elongatus sine legali judicio parium suorum, per Henricum regem patrem nostrum, vel Ricardum regem fratrem nostrum, que nos in manu nostra habemus, vel que alii tenent, que nos oporteat warantizare, respectum habebimus usque ad communem terminum cruce-signatorum; illis exceptis de quibus placitum motum fuit, vel inquisitio facta per preceptum nostrum ante susceptionem nostre crucis; cum autem redierimus, vel si forte remanserimus a peregrinatione nostra, statim eis inde plenam justiciam exhibebimus, secundem leges Wallensium, et partes predictas.

legal judgment of his Peers been disseised or deprived, by King Henry our Father, or our Brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it; we shall have a respite till the time generally allowed the Croises; excepting those things about which a suit is pending, or whereof an Inquest has been made by our Order, before we undertook the Crusade. But when we return, or if we stay at home, and do not perform our pilgrimage, we will immediately do them full Justice according to the laws of the Welsh, and of the parts aforementioned.

LXVII.

Nos reddemus filium Lewelini statim, et omnes obsides de Wallia, et cartas que nobis liberati fuerunt in securitate pacis.

LXVII.

We will without delay dismiss the son of Lewelin, and all the Welsh Hostages, and release them from the engagements they entered into with us for the preservation of the peace.

LXVIII.

Nos faciemus Alexandri Regi Scottorum, de sororibus suis et obsidibus reddendis, et libertatibus suis, et jure suo, secundum formam in quam faciemus aliis Baronibus nostris Anglie; nisi aliter esse debeat per cartas quas habemus de Willielmo patre ipsius, quondam rege Scottorum; et hoc erit per judicium parium suorum in curia nostra.

LXVIII.

We shall treat with Alexander, King of Scotts, concerning the restoring of his Sisters, and Hostages, and Rights and Liberties, in the same form and manner as we shall do to the rest of our Barons of England; unless by the engagements which his Father William, late King of Scotts, hath entered into with us, it ought to be otherwise; and this shall be left to the determination of his Peers in our Court.

LXIX.

Omnes autem istas consuetudines predictas et libertates quas nos concessimus in regno nostro tenendas, quantum ad nos pertinet erga nostros omnes de regno nostro, tam clerici quam laici observent, quantum ad se pertinet erga suos.

LXIX.

All the aforesaid customs and liberties which we have granted, to be holden in our Kingdom, as much as it belongs to us towards our people; all our subjects, as well Clergy as Laity, shall observe as far as they are concerned, towards their dependants.

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LXX.

Cum autem pro Deo et ad emendationem regni nostri, et ad melius sopiendam discordiam inter nos et Barones nostros ortam, hec omnia predicta concessimus; volentes ea integra et firma stabilitate gaudere, facimus et concedimus eis securitatem subscriptam: videlicit quod barones eligant viginti quinque barones de regno, quo voluerint, qui debeant pro totis viribus suis, observare, tenere, et facere observare, pacem et libertates quas eis concessimus, et hac presenti carta nostra confirmavimus. Ita scilicet quod si nos, vel justiciarus noster, vel Ballivi nostri, vel aliquis de Ministris nostris, in aliquo erga aliquem, articulorum pacis aut securitatis transgressi fuerimus, et delictum ostensum fuerit quatuor baronibus de predictis viginti quinque baronibus, illi quatuor barones accedant ad nos, vel ad justiciarium nostrum si fuerimus extra regnum, proponentes nobis excessum, petent ut excessum illium sine dilatione faciamus emendari; et si nos excessum non emendaverimus, vel si fuerimus extra regnum, justiciarius noster non emendaverit, infra tempus quadraginta dierum, computandum a tempore quo monstratum fuerit nobis vel justiciario nostro, si extra regnum fuerimus, predicti quatuor Barones referant causam illam ad residuos de viginti quinque Baronibus, et illi viginti quinque Barones, cum communa totius terre, distringent et gravabunt nos modis omnibus quibus poterunt; scilicet per captionem castrorum, terrarum, possessionum, et aliis modis quibus poterunt, donec fuerit emendatum secundum arbitrium eorum; salva persona nostra, et Regine nostre, et liberorum nostrorum; et cum fuerit emendatum intendent nobis sicut prius fecerunt.

LXX.

And whereas for the honour of God, and the Amendment of our Kingdom, and for quieting the Discord that has arisen between us and our Barons, we have granted all the things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the following security; namely, that the Barons may chose five and twenty Barons of the Kingdom, whom they shall think convenient, who shall take care with all their Might to hold and observe, and cause to be observed, the Peace and Liberties we have granted them, and by this our present Charter confirmed. So as that, if we, our Justiciary, our Bailiffs, or any of our Officers, shall in any case fail in the performance of them towards any Person; or shall break through any of these Articles of Peace and Security, and the offence is notified to four Barons, chosen out of the five and twenty aforementioned, the said four Barons shall repair to us, or to our Justiciary if we are out of the Realm, and laying open the Grievance, shall petition to have it redressed without delay; and if it is not redressed by us, or, if we should chance to be out of the Realm, if it is not redressed by our Justiciary within Forty Days reckoning from the time it has been notified to us, or to our Justiciary if we should be out of the Realm; the four Barons aforesaid shall lay the cause before the rest of the five and twenty Barons; and the said five and twenty Barons, together with the Community of the whole Kingdom, shall distrein and distress us in all the ways possible; namely, by seising our Castles, Lands, Possessions, and in any other manner they can, till the greivance is redressed to their pleasure, saving harmless our own Persons, and the Persons of our Queen and Children; and when it is redressed they shall obey us as before.

LXXI.

Et quicunque voluerit de terra, juret, quod ad predicta omnia exequenda parebit mandatis predictorum viginti quinque baronum, et quod gravabit nos pro posse suo cum ipsis; et publice et libere damus licentiam jurandi cuilibet qui jurare voluerit, et nulli unquam jurare prohibebimus.

LXXI.

And any person whatsoever in the Kingdom may swear, that he will obey the orders of the five and twenty Barons aforesaid, in the execution of the Premises, and that he will distress us, jointly with them, to the utmost of his power; and we give public and free Liberty to any one that will swear to them, and never shall hinder any person from taking the same Oath.

LXXII.

Omnes autem illos de terra qui per se et sponte sua noluerint jurare viginti quinque baronibus de distringendo et gravando nos cum eis, faciemus jurare eosdem de mandato nostro, sicut predictum est.

LXXII.

As for all those of our subjects, who will not of their own accord, swear to join the five and twenty Barons, in distreining and distressing us, we will issue our order to make them take the same Oath, as aforesaid.

LXXIII.

Et si aliquis de viginti quinque baronibus decesserit, vel a terra recesserit, vel aliquo alio modo impeditus fuerit, quo minus ista predicta possent exequi, qui residui fuerint de predictis viginti quinque baronibus, eligant alium loco ipsius, pro arbitrio suo, qui simili modo erit juratus quo et ceteri.

LXXIII.

And if any one of the five and twenty Barons dies, or goes out of the Kingdom, or is hindered any other way, from putting the things aforesaid in execution, the rest of the said five and twenty Barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest.

LXXIV.

In omnibus autem, que istis viginti quinque baronibus committuntur exequenda, si forte ipsi viginti quinque presentes fuerint, et inter se super re aliqua discordaverint, vel aliqui ex eis summoniti, nolint vel nequeant interesse, ratum habeatur et firmum quod major pars eorum qui presentes fuerint providerit, vel preceperit, ac si omnes viginti quinque in hoc consensissent, et predicti viginti quinque jurent quod omnia antedicta fideliter observabunt et pro toto posse suo facient observari.

LXXIV.

In all things that are committed to the charge of these five and twenty Barons, if, when they are all assembled together, they should happen to disagree about any matter; or some of them summoned will not, or cannot come, whatever is agreed upon, or enjoyned by the major part of those who are present, shall be reputed as firm and valid, as if all the five and twenty had given their consent; and the foresaid five and twenty shall swear that all the Premisses they shall faithfully observe, and cause with all their power to be observed.

MAGNA CARTA OF KING JOHN.

LXXV.

Et nos nichil impetrabimus ab aliquo, per nos, nec per alium, quod aliqua istarum concessionum et libertatum revocetur vel minuatur; et si aliquid tale impetratum fuerit, irritum sit et inane; et nunquam eo utemur per nos nec per alium.

LXXV.

And we will not, by ourselves or others, procure any thing, whereby any of these Concessions and Liberties be revoked, or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other.

LXXVI.

Et omnes malas voluntates, indignationes, et rancores ortos inter nos et homines nostros, clericos et laicos, a tempore discordie, plene omnibus remisimus et condonavimus. Preterea, omnes transgressiones factas occasione ejusdem discordie, a pascha anno regni nostri sexto decimo, usque ad pacem reformatam, plene remisimus omnibus clericis et laicis, et quantum ad nos pertinet plene condonavimus.

LXXVI.

And all the illwill, anger, and malice that hath arisen between us and our subjects of the Clergy, and Laity, from the first breaking out of the dissension between us, we do fully remit and forgive. Moreover, all Trespasses occasioned by the said dissension, from Easter in the sixteenth year of our reign, till the restoration of peace and tranquility, we hereby entirely remit to all, Clergy as well as Laity, and as far as in us lies, do fully forgive.

LXXVII.

Et insuper, fecimis eis fieri litteras testimoniales patentes domini Stephani Cantuariensis, Archiepiscopi, domini Henrici Dubliniensis, Arehiepiscopi, et episcoporum predictorum, et magistri Pandulphi, super securitate ista, et concessionibus prefatis.

LXXVII.

We have moreover granted them our Letters Patents testimonial of Stephen Lord Archbishop of Canterbury, of Henry Lord Archbishop of Dublin, and the Bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

LXXVIII.

Quare volumus et firmiter precipimus, quod Anglicana ecclesia libera sit, et quod homines in regno nostro habeant et teneant, omnes prefatas libertates, jura et concessiones, bene, et in pace, libere, et quiete, plene, et integre, sibi et heredibus suis, de nobis et heredibus nostris, in omnibus rebus et locis in perpetuum, sicut predictum est.

LXXVIII.

Wherefore we will, and firmly enjoin, that the Church of England be free, and that all men in our Kingdom, have and hold, all the foresaid Liberties, Rights and concessions, truly and peaceably, freely and quietly, fully and wholly, to themselves and their heirs, of us and our heirs, in all things and places forever, as is aforesaid.

LXXIX.

Juratum est autem tam ex parte nostra, quam ex parte baronum, quod hec omnia supradicta, bone fide, et sine malo ingenio observabuntur.

LXXIX.

It is also sworn, on as well on our part as upon the part of the Barons, that all the things aforesaid shall faithfully and sincerely be observed.

Testibus supradictis, et multis aliis. Data per manum nostram in prato quod vocatur Runningmede * inter Windelesor et Staines, quinto decimo die Junii, anno regni nostri septimo docimo.†

Given under our hand, in the presence of the witnesses above named and many others, in the Meadow called Runingmede, between Windelsore and Staines, the 17th day of June, in the 17th year of our Reign.

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* Runningmede: in some copies, *Runimede.*

† This is copied by Rapin, and is conformable to the exemplar in p. 9 of the *Statutes of the Realm.*

In page 229 of the Penny Magazine for the year 1833, there is a copy of the original seal of King John to Magna Charta; and a specimen of a fac simile of the writing of Magna Charta, beginning at the passage *Nullus liber homo capiatur vel imprisonetur, &c.*

In that account of Magna Charta, Runnymead is derived from

1. *Runningmead;* because it has been used as a race ground. But there is no proof of races having been held there in the time of King John.

2. *Runemede;* from *Rune*, a place of Council. It having been used, as the writer says, as a place of council or conference before this occasion.

3. My own opinion is (knowing the locality well, having been there repeatedly, and at Cooper's Hill, at the bottom of which, and between the Hill and the Thames, this meadow lies) it was called *Running Mead*, or meadow; from the small rivulets in it, in wet weather. It being a moist and marshy meadow, bordering the river Thames, about 21 miles from London. It would be dry enough as a place of meeting in the middle of June, when the Barons met there. Cooper's Hill, which overlooks this meadow, is the place celebrated in the verses of Sir John Denham; whose beautiful description of the Thames from thence is no less accurate than poetical:

> "Tho' deep yet clear; though gentle yet not dull;
> "Strong without rage, without o'erflowing full."

The present popular name of the place is Runnymead.

The London engraved edition of the fac simile of Magna Charta (of which the Editor has a copy) is surrounded by the Courts of Arms, emblazoned in colours, of the Barons who formed the Committee appointed by that Instrument.

CONTENTS OF THE STATUTE OF 25 EDW. 1st.

RECITING AND CONFIRMING THE *GREAT CHARTER* OF 9th HENRY 3d,

A. D. 1297.

Chapt. or Sect. 1. A confirmation of liberties of the Church and of Freemen.
Sect. 2. The relief of the King's tenant at full age.
Sect. 3. Wardship of an heir within age; the heir of a Knight.
Sect. 4. No waste shall be made by a guardian on ward's lands.
Sect. 5. Guardians shall maintain the inheritance of their wards.
Sect. 6. Heirs shall be married without disparagement.
Sect. 7. A widow shall have her marriage inheritance, and quarantine. Not to be compelled to marry.
Sect. 8. How sureties shall be charged to the King.
Sect. 9, The liberties of London, and other places, confirmed.
Sect. 10. None shall distrain for more service than is due.
Sect. 11. Common Pleas shall not follow the King's Court.
Sect. 12. Where and before whom assizes shall be held. Adjournment in cases of difficulty.
Sect, 13. Assize of Darrein presentment.
Sect. 14. How men of all sorts shall be amerced, and by whom.
Sect. 15. Concerning Bridges and Banks.
Sect. 16. Defending Banks.
Sect. 17. Holding pleas of the Crown.
Sect. 18. The King's debtor dying, the King shall be first paid.
Sect. 19. Purveyance for a Castle.
Sect. 20. Doing of Castle Ward.
Sect. 21. Taking of horses, carts and wood.
Sect. 22. How long the King shall hold the lands of felons.
Sect. 23. In what places Weirs shall be thrown down.
Sect. 24. In what cases præcipe in capite is not grantable.
Sect. 25. There shall be but one measure throughout the Realm; likewise one weight.
Sect. 26. Concerning Inquisition of life and member.
Sect. 27. Where there is tenure of the King in socage and tenure of another by Knight's service. Of Petit Serjeantry.
Sect. 28. No wager of law to be demanded without a witness.
Sect. 29. No man shall be condemned without trial by his Peers, or by the law of the Land. Right and Justice shall neither be denied, sold, or delayed.
Sect. 30. Merchant strangers shall be well used.
Sect. 31. Tenure of a barony coming to the King by escheate.
Sect. 32. Lands shall not be aliened to the prejudice of the Lords service.

CONTENTS OF MAGNA CARTA OF 25 EDWARD I.

Sect. 33. Patrons of Abbies shall have custody of them when vacant.
Sect. 34. A woman shall have appeal of death for her husband only.
Sect. 35. When the County Court, the Sheriff's Torn, and the Court Leet shall be held.
Sect. 36. No land shall be given in Mortmain.
Sect. 37. A subsidy granted to the King in consideration of this Charter, and the Charter of the Forrest.
Schedule of Confirmation by King Edward 1st, in the 25th year of his Reign.

MAGNA CARTA REGIS EDWARDI I.

XII° DIE OCTOBRIS, ANNO REGNI XXV.

A. D. MCCXCVII.

Ex Magno rotulo Statutorum in Turre Londini, in 40. 39. 38.

EDWARDUS, Dei gratia, Rex Anglie, Dux Hibernie, et Dominus Aquitanie; omnibus ad quos presentes litere pervenerint, Salutem. Inspeximus Magnam Chartam Domini Henrici, quondam regis Anglie, patris nostri, de libertatibus Anglie in hec verba;

HENRICUS, dei gratia rex Anglie, dominus Hibernie, dux Normannie, Aquitanie, et comes Andegavie; archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, vicecomitibus, prepositis, ministris, et omnibus ballivis, et fidelibus suis presentem chartam inspecturis, salutem. Sciatis quod nos, intuitu dei, et pro salute anime nostre, et animarum anteessorum et successorum nostrorum, ad exaltionem sacre ecclesie, et emendationem regni nostri, spontanea et bona voluntate nostra, dedimus et concessimus archiepiscopis, Episcopis, abbatibus, prioribus, comitibus, baronibus, et omnibus de regno, has libertates subscriptas tenendas in regno nostro Anglie imperpetuum.

EDWARD, by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all to whom these present letters shall come, Greeting. We have seen the Great Charter of the Lord Henry, sometimes King of England, our father, of the Liberties of England, in these words:

HENRY, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou: To the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and other our faithful subjects which shall see this present Charter, greeting. Know ye, That we, unto the honour of Almighty God, and for the salvation of our soul, and the souls of our progenitors and successors, Kings of England, to the advancement of Holy Church, and the amendment of our Realm, of our meer free will, have given and granted to all Archbishops, Bishops, Abbotts, Priors, Earls, Barons, and to all freemen of this our Realm, these Liberties following, to be kept in our Kingdom of England forever.

I.

In primis concessimus Deo, et hac presenti charta nostra confirma-

I.

First, we have granted to God, and by this our present Charter, have

vimus, pro nobis et heredibus nostris imperpetuum, quod ecclesia Anglicana libera sit, et habeat omnia jura sua integra, et libertates suas illesas. Concessimus eciam et dedimus omnibus liberis hominibus regni nostri, pro nobis et heredibus nostris imperpetuum, has libertates subscriptas, habendas et tenendas eis et heredibus suis, de nobis et heredibus nostris.

confirmed for us and our heirs forever, that the Church of England shall be free, and shall have all her whole rights and liberties inviolable. We have granted also and given to all the freemen of our Realm, for us and our heirs forever, these liberties underwritten, to have and to hold, to them and their heirs, of us and our heirs.

II.

Si quis Comitum, vel Baronum nostrorum sive aliorum tenencium de nobis in capite, per servicium militare, mortuus fuerit, et cum decesserit, heres ejus plene etatis fuerit et relevium debeat, habeat hereditatem suam per antiquum relevium; scilicet, heres vel heredes Comitis de Comitatu integro per centum libras; heres, vel heredes Baronis de Baronia integra, per centum marcas; heres vel heredes Militis de feodo Militis integro, per centum solidos ad plus; et qui minus habuerit, minus det, secundum antequam consuetudinem feodorum.

II.

If any of our Earls or Barons, or any other which hold of us in Chief by knight's service, die, and at the time of his death his heir be of full age, and oweth to us relief, he shall have his inheritance at the old relief; that is to say, the heir or heirs of an Earl, for a whole earldom, by an hundred pounds; the heir or heirs of a Baron, for a whole barony, by one hundred marks; the heir or heirs of a Knight, for a whole Knight's fee, by one hundred shillings, at the most; and he that hath less shall give less, according to the old custom of the fees.

III.

Si autem heres alicujus talium infra etatem fuerit, dominus ejus non habeat custodiam ejus, nec terre sue antequam homagium ejus cepit: et postquam talis heres fuerit in custodia, cum ad etatem pervenerit, scilicit viginti et unius anni, habeat hereditatem suam sine relevio, et sine fine; ita tum quod si ipse dum infra etatem fuerit, fiat Miles, nichilominus terra remaneat in custodia dominorum suorum, usque ad terminum predictum.

III.

But if the heir of any such be within age, his Lord shall not have the ward of him, nor of his land before that he hath taken of him homage; and after that such an heir hath been in ward, when he is come to full age, that is to say, to the age of one and twenty years, he shall have his inheritance without relief, and without fine. So that if such an heir, being within age, be made a Knight, yet nevertheless his Land shall remain in the keeping of his Lord, until the term aforesaid.

IV.

Custos terre hujusmodi heredis qui infra etatem fuerit non capiat de terra heredis nisi rationabiles exitus et rationabiles consuetudines, et rationabilia servitia, et hoc sine dea-

IV.

The keeper of the land of such heir, being within age, shall not take of the lands of the heir but reasonable issues, reasonable customs, and reasonable services; and

truccione et vasto hominum vel rerum. Et si nos commiserimus custodiam alicujus talis terre vicecomiti vel alicui alii qui de exitibus terre illius nobis debeat respondere, et ille de custodia destruccionem et vastum fecerit, nos ab eo capiemus emendam, et terra committatur duobus legalibus et discretis hominibus de feodo illo, qui de exitibus terre illius nobis respondeant, vel illi cui illos assignaverimus. Et si dederimus vel vendiderimus alicui custodiam alicujus talis terre, et ille inde destruccionem fecerit vel vastum, amittat illam custodiam et tradatur duobus legalibus et discretis hominibus de feodo illo, qui similiter nobis respondeant, sicut predictum est.

that without destruction or waste of his men and his goods. And if we commit the custody of any such land to the Sheriff, or to any other which is answerable unto us for the issues of the same land, and if he makes destruction or waste of those things which he hath in custody, we will take of him amends and recompense therefore, and the land shall be committed to two lawful and discreet men of that fee, which shall answer unto us for the issues of the same land, or unto him to whom we shall have assigned them; and if we give or sell to any man the custody of any such land, and he therein do make destruction or waste, he shall lose the same custody; and it shall be assigned to two lawful and discreet men of that fee, which also in like manner shall be answerable to us, as afore is said.

V.

Custos autem quamdiu custodiam terre hujusmodi habuerit, sustentet domos parcos vivaria stagna molendina et cetera ad terram illam pertinentia de exitibus terre ejusdem, et reddat heredi cum ad plenam etatem pervenerit terram suam totam instauratam de carucis, et de omnibus aliis rebus ad minus sicut illam recepit. Hec omnia observentur de custodiis Archiepiscopatuum, Episcopatuum, Abbathiarum, Prioratuum, ecclesiarum et dignitatum vacantium que ad nos pertinent, excepto quod custodie hujusmodi vendi non debent.

V.

The keeper so long as he hath the custody of the land of such an heir, shall keep up the houses, parks, warrens, ponds, mills and other things pertaining to the said land, with the issues of the said land; and he shall deliver to the Heir, when he cometh of his full age, all his land stored with ploughs, and all other things, at the least as he received it. All these things shall be observed in the custodies of Archbishopricks, Bishopricks, Abbeys, Priories, Churches and Dignities vacant which appertain to us, except this, that such custody shall not be sold.

VI.

Heredes maritentur absque disparagatione.

VI.

Heirs shall be married without Disparagement.

VII.

Vidua post mortem mariti sui, statim et sine difficultate aliqua habeat maritagium suum et hereditatem suam, nec aliquid det pro dote

VII.

A Widow, after the death of her husband, incontinent, and without any difficulty, shall have her marriage and her inheritance, and shall

sua nec pro maritagio suo nec pro hereditate sua quam hereditatem maritus suus et ipsa tenuerunt simul die obitus ipsius mariti sui, et maneat in capitali Mesuagio mariti sui per quadraginta dies post obitum mariti sui, infra quos dies assignetur ei dos sua, nisi prius fuerit ei assignata, vel nisi domus illa sit Castrum; et si de castro recesserit domus ei competens statim provideatur in qua possit honeste morari quousque dos sua ei assignetur secundum quod predictum est, et habeat rationabile estoverium suum interim de communi. Assignetur autem ei pro dote sua tertia pars totius terre mariti sui que sua fuit in vita sua, nisi de minori fuerit dotata ad ostium ecclesie. Nulla vidua distringatur ad se maritandam dum voluerit vivere sine marito. Ita tamen quod securitatem faciat quod se non maritabit sine assensu nostro, si de nobis tenuerit, vel sine assensu domini sui si de alio tenuerit.

give nothing for her dower, her marriage or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her, if it were not assigned her before, or that the house be a castle; and if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as is aforesaid; and she shall have in the meantime, her reasonable estovers of the common; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the Church door. No Widow shall be destreined to marry herself; nevertheless she shall find surety that she shall not marry without our license and assent, if she hold of us, nor without the assent of the Lord, if she hold of another.

VIII.

Nos vero vel Ballivi nostri non seisiemus terram aliquam vel redditum pro debito aliquo quamdiu catalla debitoris presentia sufficiant ad debitum reddendum et ipse debitor paratus sit inde satisfacere. Nec pleggii ipsius debitoris distringantur quamdium ipse capitalis debitor sufficiat ad solutionem ipsius debiti, et si capitalis debitor defecerit in solutione debiti, non habens unde reddat aut reddere nolit cum possit, pleggii de debito respondeant; et si voluerint habeant terras et reditus debitoris, quousque sit eis satisfactum de debito quod ante pro eo solverunt, nisi capitalis debitor monstraverit se inde esse quietum versus eosdem pleggios.

VIII.

We or our Bailiffs shall not seize any land or rent for any debt, as long as the present goods and chattles of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefore. Neither shall the pledges of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt. And if the principal debtor fail in the payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the payment of the debt. And if they will, they shall have the lands and rents of the debtor, until they be satisfied of that which they before paid for him, except that the debtor can show himself to be acquitted against the said sureties.

IX.

Civitas Londoni habeat omnes libertates suas antiquas, et consuetudines suas. Preterea volumus et concedimus quod omnes Civitates alie, et Burge et Ville et Barones de quinque portubus et omnes portus habeant omnes libertates et liberas consuetudines suas.

IX.

The city of London shall have all the old liberties and customs, which it hath been used to have. Moreover, we will and grant, that all other Cities, Boroughs, Towns, and the Barons of the five Ports, and all other Ports, shall have all their liberties and free customs.

X.

Nullus distringitur ad faciendum majus servitium de feodo Militis nec de alio libero tenemento quam inde debetur.

X.

No man shall be distrained to do more service for a Knights fee, nor any freehold, than therefore is due.

XI.

Communia placita non sequantur curiam nostram sed tenantur in aliquo loco certo.

XI.

Common pleas shall not follow our court, but shall be holden in some place certain.

XII.

Recognitiones de nova disseisina et de morte antecessoris, non capiantur nisi in suis Comitalibus et hoc modo: Nos vel si extra regnum fuerimus, capitalis Justiciarius noster, mittemus Justiciarios nostros per unum quemque Comitatum semel in anno, qui cum Militibus Comitatuum capiant in Comitatibus assisas predictas, et illa que in illo adventu suo in Comitatus per Justiciarios nostros predictos ad dictas assisas capiendas missos terminari non possunt per eosdem terminentur alibi in itinere suo; et ea que per eosdem propter difficultatem aliquorum articulorum terminari non possunt, referantur ad Justiciarios nostros deBanco et ibi terminentur.

XII.

Assises of novel disseisin and Mort d'ancestre, shall not be taken but in the shires, and after this manner; If we be out of this Realm, our chief Justicer shall send our Justicers through every county, once in the year, which, with the Knights of the shires, shall take the said Assises in those Counties; and those things that at the coming of our foresaid Justicers, being sent to take those Assises in the counties, cannot be determined, shall be ended by them at some other place in their circuit; and those things, which for difficulty of some articles cannot be determined by them, shall be referred to our Justicers of the Bench, and there be ended.

XIII.

Assise de ultima presentatione semper capiantur coram Justiciariis de Banco et ibi terminentur.

XIII.

Assises of Darrein Presentment, shall be always taken before our Justices of the Bench, and there shall be determined.

XIV.

Liber homo non amercietur pro parvo delicto nisi secundum modum ipsius delicti; et pro magno delicto secundum magnitudinem delicti salvo contenemento suo; et mercator eodem modo sulva mercandisa sua; et villanus alterius quam noster eodem modo amercietur salvo wain agio suo si inciderit in manum nostrum. Et nulla predictarum misericordiarum ponatur nisi per sacramentum proborum et legalium hominum de vicino.* Comites et Barones non amercientur nisi per pares suos et non nisi secundum modum delicti. Nulla ecclesiastica persona amercietur secundum quantitatem beneficii sui ecclesiastici, sed secundum laicum tenementum suum, et secundum quantitatem delicti.

XIV.

A Freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatnes thereof, saving to him his contenement; and a Merchant likewise, saving to him his merchandize; and any other's villain than ours, shall be likewise amerced, saving his wainage, if he fall into our mercy. And none of the said Amerciaments shall be assessed but by the oath of honest and lawful men of the vicinage. Earls and Barons shall not be amerced but by their Peers and after the manner of their offence. No man of the Church shall be amerced after the quantity of his spiritual Benefice, but after his Lay-tenement, and after the quantity of his offence.

XV

Nec villa nec liber homo distringatur facere pontes ad riparias, nisi qui ab antiquo et de jure facere debent.

XV.

No Town nor Freeman shall be distrained to make Bridges nor Banks, but such as of old time and of right have been accustomed to make them in the time of King Henry our Grandfather.

XVI.

Nulle riparie defendentur de cetero nisi ille que fuerunt in defenso tempore H. Regis Avi nostri, per eadem loca et eosdem terminos sicut esse consueverunt tempore suo.

XVI.

No Banks shall be defended from henceforth but such as were in defence in the time of King Henry our Grandfather, by the same places and the same bounds as they were wont to be in his time.

XVII.

Nullus Vicecomes Constabularius Coronator vel alii Ballivi nostri tenant placita corone nostre.

XVII.

No Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs, shall hold Pleas of our Crown.

XVIII.

Si aliquis tenens de nobis laicum feodum moriatur, et Vicecomes vel Ballivus noster ostendat litteras nos-

XVIII.

If any that holdeth of us Lay-fee, do die, and our Sheriff or Bailiff do show our Letters Patent of

* vicineto.

tras patentes de summonitione nostra de debito quod defunctus nobis debuit, liceat Vicecomiti vel Ballivo nostro attachiare et imbreviare omnia bona et catalla defuncti inventa in laico feodo ad valentiam illius debiti per visum legalium hominum. Ita tamen quod nichil inde amoveatur donec persolvatur nobis debitum quod clarum fuerit, et residuum relinquatur executoribus ad faciendum testamentum defuncti; et si nichil nobis debeatur ab ipso omnia catalla cedant defuncto salvis uxori ejus et pueris ipsius rationabilibus partibus suis.

our summon for the debt which the dead man did owe to us, it shall be lawful to our Sheriff or Bailiff to attach and inroll all the goods and chattles of the dead, being found in the said fee, to the value of the same debt, by the sight and testimony of lawful men, so that nothing thereof shall be taken away, until we be clearly paid off the debt; and the residue shall remain to the Executors to perform the testament of the dead; and if nothing be owing unto us, all the chattles shall go to the use of the dead, saving to his wife and children their reasonable parts.

XIX.

Nullus constabularius vel ejus ballivus capiat blada vel alia catalla alicujus qui non sit de villa ubi castrum situm est; nisi statim reddat denarios inde aut respectum inde habere possit de voluntate venditoris. Si autem de ipsa villa fuerit, infra quadraginta dies post, precium reddat.

XIX.

No Constable nor his Bailiff, shall take corn or any other chattles of any man, if the man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the will of the seller was to respite the payment, and if he be of the Town, the price shall be paid unto him within forty days.

XX.

Nullus constabularius distringat aliquem Militem ad dandos denarios pro custodia castri si ipse eam facere voluerit in propria persona sua, vel per alium probum hominem facere, si ipse eam facere non possit propter rationabilem causam. Et si nos adduxerimus vel miserimus eum in exercitum, sit quietus in custodia secundum quantitatem temporis quo per nos fuerit in exercitu de feodo pro quo fecit servicium in exercitu.

XX.

No Constable shall distrain any Knight for to give money for keeping of his castle, if he himself will do it in his proper person, or cause it to be done by another sufficient man, if he may not do it himself for some reasonable cause. And if we do lead or send him in an army, he shall be free from Castleward for the time that he shall be with us in fee in our host, for the which he hath done service in our wars.

XXI.

Nullus vicecomes vel ballivus noster, vel aliquis alius capiat equos vel carettas alicujus pro cariagio faciendo nisi reddat liberationem antiquitus statutam, scilicet pro una caretta ad duos equos decem denarios per diem, et pro caretta ad tres equos, quatuordecem denarios per diem. Nulla caretta dominica alicujus eccle-

XXI.

No Sheriff or Bailiff of ours or any other, shall take the Horses or Carts of any man to make carriage, except he pay the old price limited, that is to say, for carriage with two horses, X. d. a day; for three horse, XIV. d. a day. No Demesne cart of any spiritual person or Knight, or any Lord, shall be taken by our

siastice persone vel Militis, vel alicujus domini per ballivos nostros capiatur. Nec nos nec ballivi nostri nec alii capiemus boscum alienum ad castra vel ad alia agenda nostra nisi per voluntatem illius cujus boscus ille fuerit.

Bailiffs; nor we, nor our Bailiffs, nor any other, shall take any man's wood for our Castles, or other our necessaries to be done, but by the license of him whose the wood is.

XXII.

Nos non tenebimus terras illorum qui convicti fuerint de felonia nisi per unum annum et unum diem et tunc reddantur terre ille dominis feodorum.

XXII.

We will not hold the lands of them that be convict of Felony, but one year and one day, and then those lands shall be delivered to the Lords of the fee.

XXIII.

Omnes Kidelli deponantur de cetero penitus per Tamisiam et Medweyam et per totam Angliam nisi per costeram maris.

XXIII.

All Wears shall be from henceforth utterly put down by Thames and Medway, and through all England but only by the sea coasts.

XXIV.

Breve quod vocatur Præcipe, de cetero non fiat alicui de aliquo libero tenemento unde liber homo perdat Curiam suam.

XXIV.

The Writ that is called Præcipe in capite, shall be from henceforth granted to no person of any freehold, whereby any freeman may lose his Court.

XXV.

Una mensura vini sit per totum regnum nostrum et una mensura cervisie et una mensura bladi, scilicet quarterium Londoniense, et una latitudo pannorum tinctorum, russettorum et haubergettorum, scilicet due ulne infra listas. De ponderibus vero sit sicut de mensuris.

XXV.

One measure of Wine shall be through our Realm, and one measure of Ale, and one measure of Corn, that is to say, the Quarter of London; and one breadth of dyed Cloth, russets and haberjects, that is to say, two Yards within the lists. And it shall be of Weights as it is of Measures.

XXVI.

Nichil de cetero detur pro brevi inquisitionis ab eo qui inquisitionem petit de vita vel de membris, sed gratis concedatur et non negetur.

XXVI.

Nothing from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life, or of Member; but it shall be granted freely and not denied.

XXVII.

Si aliqui teneant de nobis per feodifirmam vel per socagium vel vel burgagium, et de alio teneant

XXVII.

If any do hold of us by Feeferm or by Socage, or Burgage, and he holdeth lands of another by Knight's

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terram per servicum militare, nos non habebimus custodiam heredis nec terre sue que est de feodo alterius occasione illius feodifirme, vel burgagii, vel socagii, nec habebimus custodiam illius feodifirme vel socagii vel burgagii nisi ipsa feodifirma debeat servicium militare. Nos nonhabebimus custodiam heredis vel alicujus terre quam tenet de aliquo alio per servicium militare, occasione alicujus parve sergentie quam tenet de nobis per servicium reddendi nobis cultellos vel sagittas vel hujusmodi.

Service, we will not have the custody of his Heir, or of his Land, which is holden of the Fee of another, by reason of that Feeferm, Socage, or Burgage. Neither will we have the custody of such Feeferm, Socage, or Burgage, except Knight's Service be due unto us out of the said Feeferm. We will not have the custody of the Heir, or of any Land which he holds of another by Knight's Service, by occasion of any Petit Sergeantry, that any man holdeth of us by Service to pay a knife, an arrow, or the like.

XXVIII.

Nullus ballivus de cetero ponat aliquem ad legem manifestam, nec ad juramentum simplici loquela sua, sine testibus fidelibus ad hoc inductis.

XXVIII.

No Bailiff from henceforth shall put any man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same.

XIX.

Nullus liber homo capiatur vel imprisonetur aut disseisiatur de libero tenemento suo, vel libertatibus vel liberis consuetudibus suis, aut utlagatur aut exuleter aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terre. Nulli vendemus, nulli negabimus aut differemus, rectum vel justitiam.

XIX.

No Freeman shall be taken or imprisoned, or disseized of his Freehold, or Liberties, or Free Customs, or be outlawed, or exiled, or any otherwise destroyed; and we will not pass upon him nor condemn him, but by lawful judgement of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man, either Justice or Right.

XXX.

Omnes mercatores nisi publice antea prohibiti fuerint, habeant salvum et securum conductum exire de Anglia et venire in Angliam et morari et ire per Angliam tam per terram quam per aquam, ad emendum et vendendum, sine omnibus toltis malis, per antiquas et rectas consuetudines, preterquam in tempore guerre: et si sint de terra contra nos guerrina et tales inveniantur in terra nostra in principio guerre, attachiantur sine dampno corporum vel rerum donec sciatur a nobis vel a capitali Justiciario nostro quomodo Merca-

XXX.

All Merchants, if they were not openly prohibited before, shall have their safe and sure Conduct to depart out of England, to come into England, to tarry in and go through England, as well by Land as by Water, to buy and sell without any manner of evil Tolts, by the old and rightful Customs, except in time of War. And if they be of a land making War against us, and be found in our Realm at the beginning of the Wars, they shall be attached without harm of body or of goods, until it be known to us, or our Chief

tores terre nostre tractentur qui tunc inveniuntur in terra illa contra nos guerrina; et si nostri salvi sint ibi, alii salvi sint in terra nostra.

Justice, how our Merchants be intreated there in the land making War against us; and if our Merchants be well intreated there, theirs shall be likewise with us.

XXXI.

Si quis tenuerit de aliqua escaeta sicut de honore Walingfordi, Belonie, Nottingham, Lancastrii vel aliis escaetis que sunt in manu nostra et sint Baroni, et obierit, heres ejus non det aliud relevium nec faciat nobis aliud servicium quam facerit Baroni, si illa esset in manu Baronis; et nos eodem modo eam tenebimus quo Baro eam tenuit. Nec nos occasione talis Baronii vel escaeta habebimus aliquam escaetam vel custodiam aliquorum nostrorum hominum nisi de nobis alibi tenuerit in capite ille qui tenuit baroniam vel escaetam.

XXXI.

If any man hold of any Eschete, as of the honour of Wallingford, Nottingham, Boloin, or of any other Eschetes which be in our hands, and are Baronies, and die, his heir shall give none other relief, nor do none other service to us than he should to the Baron, if it were in the Baron's hand; and we in the same wise shall hold it as the Baron held it; neither shall we have by occasion of any Barony or Eschete, any Eschete or keeping of any of our men, unless he that held the Barony or Eschete, elsewhere held of us in chief.

XXXII.

Nullus liber homo det de cetero amplius alicui vel vendat de terra sua quam ut de residuo terre sue sufficientur possit fieri domino feodi servitium ei debitum quod pertinet ad feodum illud.

XXXII.

No Freeman from henceforth shall give or sell any more of his land; but so that of the residue of the Lands, the Lord of the Fee may have the service due to him, which belongeth to the Fee.

XXXIII.

Omnes patroni Abbathiarum qui habent cartas regum Anglie de advocatione vel antiquam tenuram vel possessionem habeant earum custodiam cum vacaverint, sicut habere debent et sicut superius declaratum est.

XXXIII.

All Patrons of Abbeys, which have the King's Charters of England of Advowson, or have old tenure or possession in the same, shall have the custody of them when they fall void, as it hath been accustomed, and as it is afore declared.

XXXIV.

Nullus capiatur aut imprisonetur propter appellum femine de morte alterius quam viri sui.

XXXIV.

No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other man than her husband.

XXXV.

Nullus Comitatus de cetero teneatur nisi de mense in mensem, et ubi major terminus esse solebat major

XXXV.

No County Court from henceforth shall be holden, but from Month to Month; and where greater

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sit. Nec aliquis Vice comes vel Ballivus suus faciat turnum suum per Hundredum nisi bis in anno, et non nisi in loco debito et consueto,videlicet semel post Paschum et iterum post festum sancti Michaelis. Et visus de franco plegio tunc fiat ad illum terminum sancti Michaelis sine occasione. Ita scilicet quod quilibet habeat libertates suas quas habuit vel habere consuevit tempore H. Regis Avi nostri, vel quas postea perquisivit; fiat autem visus de franco plegio sic videlicit quod pax nostra teneatur,et quod theothinga teneatur integra sicut esse consuevit; et quod Vice-comes non querat occasiones et quod contentus sit de eo quod Vicecomes habere consuevit de visu suo faciendo,tempore H. Regis Avi nostri.

time hath been used, there shall be greater: Nor any Sheriff or his Bailiff shall keep his turn in the hundred, but twice in the year; and no where but in due place and accustomed: that is to say, once after Easter, and again after the Feast of St. Michael. And the view of Frank Pledge shall be likewise at the Feast of St. Michael, without occasion; so that every man may have his liberties, which he had, or used to have, in the time of King Henry our Grandfather, or which he hath purchased since. The view of Frank Pledge shall be so done, that our Peace may be kept; and that the Tything be wholly kept as it hath been accustomed; and that the Sheriff seek no occasions, and that he be content with so much as the Sheriff was wont to have for his Viewmaking,in the time of King Henry our Grandfather.

XXXVI.

Nec liceat de cetero alicui dare terram suam domui religiose ita quod illam resumat de eadem domo tenendam. Ned liceat alicui domui religiose terram alicujus sic accipere quod tradat illam illi a quo eam recepit tenendam. Si quis autem de cetero terram suam alicui domui religiose sic dederit et super hoc convincetur,donum suum penitus cassetur et terra illa domino illius feodi incurratur.

XXXVI.

It shall not be lawful for any from henceforth to give his lands to any Religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any House of Religion to take the lands of any, and to lease the same to him of whom he received it. If any from henceforth give his lands to any Religious House, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the Lord of the Fee.

XXXVII.

Scutagium de cetero capiatur sicut capi consuevit tempore H. Regis Avi nostri. Et salve sint Archiepiscopis, Episcopis, Abbatibus, Prioribus, Templaribus, Hospitelaribus, Comitibus, Baronibus et omnibus aliis tam ecclesiasticis personis quam secularibus,omnes libertates et libere consuetudines quas prius habuerunt. Omnes autem consuetudines et libertates predictas quas concessimus in regno nostro tenendas quantum ad

XXXVII.

Escuage from henceforth shall be taken like as it was wont to be in the time of King Henry our Grandfather; reserving to all Archbishops, Bishops, Abbots, Priors, Templers, Hospitallers, Earls, Barons, and all persons, as well Spiritual as Temporal, all their free liberties and free customs which they have had in time passed: And all these customs and liberties aforesaid, which we have granted to be holden within

nos pertinet, erga nostros, omnes de regno nostro tam clerici quam laici observent quantum ad se pertinet erga suos. Pro hac autem donatione et concessione libertatum istarum et aliarum contentarum in carta nostra delibertatibus foreste, Archiepiscopi, Episcopi, Abbates, Priores, Comites, Baronnes, Milites, libere tenentes et omnes de regno nostro dederunt nobis quintamdecimam partem omnium mobilium suorum. Concessimus etiam eisdem pro nobis et heredibus nostris quod nec nos nec heredes nostri aliquid perquiremus per quod libertates in hac carta contente infringantur vel infirmentur. Et si ab aliquo contra hoc aliquid perquisitum fuerit nichil valeat et pro nullo habeatur. Hiis testibus: domino S. Cantuar' Archiep'o, E. London' Ep'o. J. Bathon' Ep'o. P. Winton' H. Lincoln, R. Sarum, W. Roff, W. Wygorn' J. Elien' H. Hereforden' R. Cicestr' W. Exon' Episcopis. Abbate sancti Edmundi, Abbate sancti Albani, Abbate de Bello, Abbate sancti Augustini Cantaur' Abbate de Evesham, Abbate de Westm' Abbate de Burgo sancti Petri, Abbate de Reding, Abbate de Abyndon' Abbate de Malmsbur' Abbate de Wynchecumbe, Abbate de Hide, Abbate de Certeseye, Abbate de Shirburn' Abbate de Cerne, Abbate de Abbotebir', Abbate de Middleton' Abbate de Seleby, Abbate de Cirencestr' H. de Burgo Justiciario H. Comite Cestr' et Lincoln' W. Comite Sarum W. Comite Waren' G. de Clare Comite Gloucestr' et Hertford' W. de Ferrar' Comite Derb' W. de Mandeville Comite Essex' H. de Bigod Comite Norff' W. Comite Albemarlie H. Comite Hereford' J. Constabular' Cestr' R. de Ros R. filio Walteri R. de Veteri Ponte W. de Bruer' R. de Muntifichet P. filio Herberti W. de Aubeny, F. Gresley, F. de Breus' J. de Monemue J. filio Alani H. de Mortuo Mari W. de Bello Campo W. de Sancto Johanne P. de Malo Lacu Briano de Insula, Thoma de Multon R. de Argentein, G. de Nevill W. Manduit,

this our Realm, as much as appertaineth to us and our heirs, we shall observe; and all men of this our Realm, as well Spiritual as Temporal, as much as in them is, shall observe the same against all persons in likewise. And for this our gift and grant of these liberties, and of other contained in our charter of the liberties of our Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our subjects, have given unto us the fifteenth part of all their moveables. And we have granted unto them, on the other part, that neither we, nor our heirs, shall procure or do any thing whereby the liberties in this Charter contained, shall be infringed or broken; and if any thing be procured by any person, contrary to the premises, it shall be had of no force nor effect. These being witnesses; Lord S. Archbishop of Canterbury, E. Bishop of London, J. Bishop of Bathe, P. of Winchester, H. of Lincoln, R. of Salisbury, W. of Rochester, W. of Worcester, J, of Ely, H. of Hereford, R. of Chichester, W. of Exeter, Bishops; the Abbot of St. Edmonds, the Abbot of St. Albans, the Abbot of Bello, the Abbot of St. Augustines in Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Bourgh St. Peter, the Abbot of Reading, the Abbot of Abindon, the Abbot of Malmsbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of Certesy, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotebir, the Abbot of Middleton, the Abbot of Seleby, the Abbot of Cirencester; H, de Burgh, Justice, H. Earl of Chester and Lincoln, W. Earl of Salisbury, W. Earl of Warren, G. de Clare, Earl of Gloucester and Hertford, W. de Ferrars, Earl of Derby, W. de Mandeville, Earl of Essex, H. de Bygod, Earl of Norfolk, W. Earl of Albemarle, H. Earle of Hereford, J. Constable of Chester, R. de Ros, R. Fitzwalter, R. de Vyponte, W.

J. de Bulan et aliis. Dat' apud Westm' xi. die Febr' anno regni nostri nono.

de Bruer, R. de Montefichet, P. Fitzherbert, W. de Aubenie, F. Gressly, F. de Breus, J. de Monemue, J. Fitsallen, H. de Mortimer, W. de Beauchamp, W. de St. John, P. de Mauli, Brian de Lisle, Thomas de Multon, R. de Argentyn, G. de Neville, W. de Manduit, J. de Balun, and others: Given at Westminster, the eleventh day of February, the ninth year of our Reign.

II.

Nos autem donationes et concessiones predictas ratas habentes et gratas eas pro nobis et heredibus nostris concedimus et confirmamus easque tenore presentium innovamus volentes et concidentes pro nobis et heredibus nostris quod carta predicta in omnibus et singulis suis articulis imperpetuum firmiter et inviolabiliter observetur; etiam si aliqui articuli in eadem carta contenti hucusque forsitan non fuerint observati. In cujus rei testimonium has litteras nostras fieri fecimus patentes. T. Edwardo Filio nostro apud Westm' duodecimo die Octobr' anno regni vicesimo quinto.

II.

We, ratifying and approving these gifts and grants aforesaid confirm and make strong for us and our heirs perpetually, all the same, and by the tenour of these presents do renew the same; willing and granting for us and our heirs, that this Charter and all and singular these Articles forever, shall be stedfastly, inviolably, and firmly observed, and if any article in the said Charter contained, yet hitherto, peradventure hath not been kept, we will, and by Authority Royal command, from henceforth firmly they be observed. In witness whereof, we have caused these our Letters Patents to be made. T. Edward our son, at Westminster, the twenty eighth day of March, in the twenty eighth* year of our reign.

* This ought to be the 25th year, A. D. 1297. *See Statutes of the Realm*, vol. I, p. 119.

The following PETITION OF RIGHTS, presented to Charles the First, on the second day of June, 1628, is adopted by the "Act of 1712, of our Province Laws, to put in force the several British Statutes, therein enumerated."—*Trott's Laws, page* 236 *and* 249.

This Petition was drawn up by Sir Edmund Coke.—*Coke*, 207, *Edition of* 1697. EDIT.

TO THE KING'S MOST EXCELLENT MAJESTIE,

Humbly shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembled, that, whereas it is declared and enacted by a Statute, made in the tyme of the Raigne of King Edward the first, commonly called, "Statutum de Tallagio non concedendo," that no Tallage or Aide should be laid or levied, by the King or his heires, in this Realme; without the good-will and assent of the Arch Bishopps, Bishopps, Earles, Barons, Knights, Burgesses and other the freemen of the cominalty of this realme: And by Authority of Parliament houlden in the five and twentieth yere of the Raigne of King Edward the third, it is declared and enacted, that from thenceforth noe person should be compelled to make any loanes to the King against his will, because such loanes were against reason, and the franchise of the land; and by other lawes of this realme it is provided, that none should be charged by any charge or imposition, called a Benevolence, nor by such like charge, by which the Statuts before mentioned, and other the good lawes and statuts of this Realme, your Subjects have inherited this freedom, that they should not be compelled to contribute to any Tax, Tallage, Aide, or other like charge, not sett by common consent in Parliament.

Act pub. xviii. p. 1010, Rushworth T. 1. p. 588, Annals p. 103.

Yet nevertheless of late, divers commissions, directed to sundrie commissioners in severall Counties, with instructions, have been issued, by means whereof your People have bene in divers places assembled, and required to lend certaine sommes of moncy unto your Majestie, and many of them upon their refusall soe to doe, have had an oath administered unto them, not warrantable by the Lawes or Statuts of this Realme, and have been constrained to become bound to make appearance, and give attendance before your Privie Councell, and in other places; and others of them have beene therefore imprisoned, confined, and sundrie other wayes molested and disquieted: And divers others charges have bene laid and leavied upon your People in severall Counties, by Lord Lieutenants, Deputie-Lieutenants, Commissioners for musters, Justices of peace and others, by commaunde or direction from your Majestie, or your Privie-Councell, against the lawes and free customes of the realme.

PETITION OF RIGHTS.

And whereas alsoe by the Statute called "The greate Charter of the Liberties of England," it is declared and ennacted, that noe freeman may be taken or imprisoned, or be disseised of his freehold or liberties, or his free customes, or be outlawed or exiled, or in any manner destroyed, but by the lawfull judgment of his Peeres, or by the lawe of the land.

9 Hen. 3, 29.

28 Edw. 3, 3.

And in the eight and twentieth yere of the reigne of King Edward the third, it was declared and ennacted by Authoritie of Parliament, that no man, of what estate or condition that he be, should be putt out of his lands or tenements, nor taken nor imprisoned, nor disherited, nor putt to death, without being brought to answer by due process of lawe.

37 Edw. 3, 18.

38 Edw. 3. 9.

42 Edw. 3. 3.

17 Rich. 2. 6.

Nevertheless against the tenour of the said Statutes, and other the good lawes and Statuts of your Realme, to that end provided, divers of your subjects have of late beene imprisoned without any cause showed; and when for their deliverance they were brought before your Justices, by your Majestie's Writ of Habeas Corpus, there to undergoe and receive, as the Court should order, and their Keepers commaunded to certify the causes of their detayner; noe cause was certified, but that they were detayned by your Majestie's special commaund, signified by the Lords of your Privie Councell, and yet were returned back to severall prisons, without being charged with any thynge to which they might make answeare according to the lawe.

And whereas of late, great companies of souldiers and marriners have bene dispersed into divers Counties of the Realme, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojorne, against the lawes and customes of this realme, and to the great grievance and vexation of the People.

25 Edw. 3. 9.

9 Hen. 3. 29.

25 Edw. 3. 4.

28 do. 3.

And whereas alsoe, by authority of Parliament, in the 25th yere of the raigne of King Edward III., it is declared and enacted that noe man should be forejudged of life or lymbe, against the forme of the great Charter, and the lawe of the land, and by the said great Charter, and other the Laws and Statuts of this your Realme, no man ought to be adjudged to death, but by the lawes established in this your realme, either by the customes of the same realme, or by Acts of Parliament; And whereas noe offender, of what kind soever, is exempted from the proceedings to be used, and the punishments to be inflicted by the lawes and statutes of this your realme; nevertheless of late time, divers commissions under your Majestie's Greate Seale have issued forth, by which certaine persons have been assigned and appointed commissioners, with power and authoritie to proceed within the land, according to the justice of martiall lawe, against such souldiers and marriners, or other dissolute persons joyning with them, as should commit any murder, robbery, felonie, meeting, or other outrage or misdemeanour whatsoever; and by such summarie course and order as is agreeable to martiall lawe, and as is used in armies in tyme of war, to proceed to the tryal and condemnation of such offenders, and them to cause to be executed and putt to death, according to the lawe martiall.

By pretext whereof, some of your Majestie's Subjects have bene by some of the said commissioners put to death, when and where, if by the lawes and statuts of the land they had deserved death, by the same lawes and statuts alsoe they might, and by noe other ought, to have been judged and executed.

And alsoe sundrie grievous offenders, by colour thereof claymynge an exemption, have escaped the punishments due to them by the lawes and statuts of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders, according to the same lawes and statuts, upon pretence

that the said offenders were punishable only by martiall lawe, and by authority of such commissions as aforesaid; which commissions, and all others of like nature, are wholely and directlie contrary to the said laws and statuts of this your realme.

They doe therefore humbly pray your most excellent Majestie, That no man hereafter be compelled to make or yielde any guifte, loane, benevolence, tax, or such like charge, without common consent by Act of Parliament; and that none be called to make answeare, or take such oath, or to give attendance, or be confyned, or otherwise molested or disquieted concerning the same, or for refusall thereof: And that noe freeman, in any such manner as is before mentioned, be imprisoned or detayned: And that your Majestie would be pleased to remove the said souldiers and marriners, and that your People may not be soe burthened in the tyme to come: And that the aforesaid commissions for proceedinge by martiall lawe, may be revoaked and annulled; and that hereafter, noe commissions of like nature, may issue forth to any person or persons whatsoever, to be executed as aforesaid, least by colour of them, any of your Majestie's subjects be destroyed, or putt to death, contrary to the laws and franchise of the land. Petition.

All which they do most humbly pray of your most excellent Majestie, as their Rights and Liberties, accordinge to the lawes and statuts of this Realme: And that your Majestie would also vouchsafe to declare, that the awardes, doeings, and proceedings, to the prejudice of your People, in any of the premisses, shall not be drawn hereafter into consequence or example: And that your Majestie would be alsoe graciously pleased, for the further comfort and safetie of your people, to declare your royal will and pleasure, That in the things aforesaid all your officers and ministers shall serve you, according to the lawes and statuts of this realme, as they tender the honour of your majestie, and the prosperity of this Kingdom.

THE KING'S ANSWER TO THE PETITION OF RIGHTS.

The King willeth that Right be done, according to the laws and customs of the realme; and that the Statutes be put in due execution, that his subjects may have no cause to complain of any wrong or oppressions, contrary to their just Rights and Liberties, to the preservation whereof he holds himself in conscience as well obliged, as of his prerogative. The King's Answer. Rushworth, T. 1. p. 590.

Petition of both Houses to the King, on the 7th day of June, 1628, *wherein a more full and satisfactory answer to the above Petition, is prayed for.*

May it please your most excellent Majestie, The Lords Spiritual and Temporal, and Commons in Parliament assembled, taking in consideration that the good intelligence between your Majestie and your People, doth Petition of both Houses.

PETITION OF RIGHTS.

much depend upon your Majestie's answer upon their Petition of Right, formerly presented; with unanimous consent do now become most humble suitors unto your Majestie, that you would be pleased to give a clear and satisfactory answer thereunto, in full Parliament.

To which Petition the King replied,

The answer I have already given you was made with so good deliberation, and approved by the judgments of so many wise men, that I could not have imagined but that it would have given you full satisfaction: But to avoid all ambiguous interpretations, and to show you there is no doubleness in my meaning, I am willing to pleasure you as well in words as in substance; Read your petition, and you shall have an answer that I am sure will please you.

Here the Petition was read, and the following answer was returned,—

Answer. "Soit Droit fait comme il est desire." C. R.

Then said his Majesty,

Speech of the King. This I am sure is full, yet no more than I granted you in my first answer, for the meaning of that, was to confirm your liberties, knowing according to your own protestations, that you neither mean nor can hurt my prerogative. And I assure you, my maxim is, that the People's liberties strengthen the King's Prerogative, and the King's Prerogative is to defend the People's Liberties.

You see how ready I have shown myself to satisfy your demand, so that I have done my part; wherefore if this parliament have not a happy conclusion, the sin is yours, I am free from it.

[The above is the Answer of the King in Parliament, and his Speech on that occasion, June 7th, 1628.]

AN ACT

FOR THE BETTER SECURING THE LIBERTY OF THE SUBJECT, AND FOR PREVENTION of IMPRISONMENTS BEYOND THE SEAS;

COMMONLY CALLED

"THE HABEAS CORPUS ACT."*

31 CH. 2. CH. 2, MAY 1679.

WHEREAS great delays have been used by sheriffs, gaolers and other officers, to whose custody any of the King's subjects have been committed, for criminal or supposed criminal matters, in making returns of writs of Habeas Corpus, to them directed, by standing out on Alias or Pluries Habeas Corpus, and sometimes more, and by other shifts to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the King's subjects have been, and hereafter may be long detained in prison, in such cases, where by law they are bailable, to their great charge and vexation: Preamble.

II. For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal or supposed criminal matters; (2) BE IT ENACTED, *By the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority thereof,* That whensoever any person or persons shall bring any *Habeas Corpus* directed unto any sheriff or sheriffs, gaoler, minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under-officers, under keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under-officers, under-keepers or deputies, shall within three days after the service thereof, as aforesaid (unless the commitment aforesaid were for treason or felony, plainly and especially expressed in the warrant of commitment) upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the Judge or Court that awarded the same, and endorsed upon the said writ, not exceeding 12 pence per mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the Court or Judge to which he shall be brought, according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; (3) and bring or cause to be brought the body of the party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the great Seal of England, for the

Writs of Habeas Corpus within 3 days after service to be returned, and the body brought, if within twenty miles, &c.

Vin. V. 14, 209

* Copied from the Statutes at Large, by Danby Pickering, Esq., Ed. 1763, vol. 8, p. 432.

THE HAB. CORPUS ACT.

time being, or the Judges or Barons of the said Court, from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; (4) and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such Court or person is, or shall be residing; and if beyond the distance of 20 miles, and not above 100 miles, then within the space of 10 days, and if beyond the distance of 100 miles, then within the space of 20 days after such delivery aforesaid, and not longer.

Such writs, how to be marked. Writs of Habeas Corpus, and the proceedings thereon in vacation time.

III. And to the intent that no sheriff, gaoler or other officer, may pretend ignorance of the import of any such writ; (2) Be it enacted by the authority aforesaid, That all such writs shall be marked in this manner, "Per statutum, tricesimo primo Caroli secundi Regis," and shall be signed by the person that awards the same; (3) and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation time and out of term it shall and may be lawful to and for the person or persons so committed or detained, (other than persons convict or in execution by legal process) or any one in his or their behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of his Majesty's Justices, either of the one bench or of the other, or the Barons of the Exchequer of the Degree of the Coif; (4) and the said Lord Chancellor, Lord Keeper, Justices or Barons or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorised and required, upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an Habeas Corpus, under the Seal of such Court whereof he shall then be one of the Judges, (5) to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said Lord Chancellor or Lord Keeper, or such Justice, Baron, or any other Justice or Baron of the Degree of the Coif, of any of the said Courts; (6) and upon service thereof as aforesaid, the officer or officers, his or their under officer or under officers, under keeper or under keepers, or their deputy, in whose custody the party is so committed or detained, shall within the times respectively before limited, bring such prisoner or prisoners before the said Lord Chancellor, or Lord Keeper, or such Justices, Barons or one of them, before whom the said writ is made returnable, and in case of his absence, before any other of them, with the return of such writ and the true causes of the commitment or detainer; (7) and thereupon within two days after the party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such Justice or Baron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognisance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and the nature of the offence, for his or their appearance in the Court of King's Bench the term following, or at the next assizes, sessions, or general gaol delivery, of or for such county, city or place where the commitment was, or where the offence was committed, or in such other court where the said offence is properly cognisable, as the case shall require, and then shall

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certify the said writ with the return thereof, and the said recognisance or recognisances into the said court where such appearance is to be made; (8) unless it shall appear to the said Lord Chancellor, or Lord Keeper, or Justice or Justices, or Baron or Barons, that the party so committed is detained upon a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences for the which by the law the prisoner is not bailable.

Persons neglecting for 2 terms to pray a H. C. shall have none in vacation.

IV. Provided always and be it enacted, That if any person shall have wilfully neglected by the space of two whole terms after his imprisonment, to pray a Habeas Corpus for his enlargement, such person so wilfully neglecting, shall not have any Habeas Corpus to be granted in vacation time, in pursuance of this act.

Officers how to be proceeded against for not obeying such writs.

V. And be it further enacted, by the authority aforesaid, That if any officer or officers, his or their under officer, or under officers, under keeper or under keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisioner or prisoners according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver to the person so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head gaolers and keepers of such person, and such other person in whose custody the prisoner shall be detained, shall for the first offence forfeit to the prisoner or party grieved, the sum of £100; (2) and for the 2d. offence, the sum of £200, and shall and is hereby made incapable to hold or execute his said office; (3) the said penalties to be recovered by the prisoner or party grieved, his executors and administrators, against such offender, his executors or administrators, by any action of debt, suit, bill, plaint or information, in any of the King's Courts at Westminister, wherein no essoin, protection, priviledge, injunction, wager of law, or stay of prosecution by "Non vult ulterius prosequi," or otherwise, shall be admitted or allowed, or any more than one imparlance; (4) and any recovery or judgement at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgement at the suit of a party grieved, for any offence after the first judgement, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.

Persons set at large, not to be re-committed but by order of court.

VI. And for the prevention of unjust vexation by reiterated commitments for the same offence; (2) Be it enacted, by the authority aforesaid, That no person or persons, which shall be delivered or set at large upon any Habeas Corpus, shall at any time hereafter be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of such court wherein he or they shall be bound by recognisance to appear, or other court having jurisdiction of the cause; (3) and if any other person or persons shall knowingly, contrary to this act, re-commit or imprison, or knowingly procure or cause to re-committed or imprisoned, for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved, the sum of £500; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid.

Persons

VII. Provided, always, and be it further enacted, That if any

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person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of Oyer and Terminer or general Gaol Delivery, to be brought to his trial, shall not be indicted some time in the next term, Sessions of Oyer and Terminer or General Gaol Delivery, after such commitment; it shall and may be lawful to and for the Judges of the Court of King's Bench, and Justices of Oyer and Terminer or General Gaol Delivery, and they are hereby required, upon motion to them made in open Court the last day of the term, sessions or Gaol Delivery, either by the prisoner or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the Judges and Justices upon oath made, that the witnesses for the King could not be produced the same Term, Sessions or General Gaol Delivery; (2) and if any person or persons committed as aforesaid, upon his prayer or petition in open Court the first week of the Term or the first day of the Sessions of Oyer and Terminer and General Gaol Delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of Oyer and Terminer or General Gaol Delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment.

committed for treason or felony, shall be indicted the next term, or let to bail.

And to be tried the term after, or discharged.

1. Vent. 346.

May be still kept in custody for civil suit.

VIII. Provided always, That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law for such other suit.

Persons not to be removed from one prison to another without cause.

IX. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever, for any criminal or supposed criminal matter, that the said person shall not be removed from the said prison and custody, into the custody of any other officer or officers; (2) unless it be by Habeas Corpus or some other legal writ; or where the prisoner is delivered to the constable or other inferior officer, to carry such prisoner to some common gaol; (3) or where any person is sent by order of any Judge of Assise, or Justice of the Peace, to any common work-house or house of correction; (4) or where the prisoner is removed from one place or prison, to another within the same county, in order to his or her trial or discharge in due course of law; (5) or in case of sudden fire or infection, or other necessity; (6) and if any person or persons shall, after such commitment aforesaid, make out and sign or countersign any warrant or warrants for such removal aforesaid contrary to this act; as well he that makes or signs, or countersigns such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved.

Penalty for denying a Habeas Corpus.

X. Provided also, and be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any prisoner and prisoners as aforesaid, to move and obtain his or their Habeas Corpus as well out of the High Court of Chancery or Court of Exchequer, as out of the Courts of King's Bench or Common Pleas, or either of them; (2) and if the said Lord Chancellor or Lord Keeper, or any Judge or Judges, Baron or Barons for the time being, of the degree of the Coif, of any of the Courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or de-

tainer, or upon oath made that such copy or copies were denied as aforesaid, shall deny any writ of Habeas Corpus, by this act required to be granted, being moved for as aforesaid, they shall severally forfeit to the prisoner or party grieved, the sum of £500, to be recovered in manner aforesaid.

Habeas Corpus shall run into counties palatine, and privileged places.

XI. And be it declared and enacted by the authority aforesaid, That an Habeas Corpus according to the true intent and meaning of this act, may be directed and run into any County Palatine, the Cinque Ports, or other priveleged places within the Kingdom of England, Dominion of Wales, or Town of Berwick upon Tweed, and the islands of Jersey or Guernsey; any law or usage to the contrary notwithstanding.

No subjects shall be sent to foreign prisons.

2 Vent. 314.

XII. And for preventing illegal imprisonments in prisons beyond the seas; (2) Be it further enacted by the authority aforesaid, That no subject of this realm that now is, or hereafter shall be an inhabitant or resiant of this Kingdom of England, Dominion of Wales, or town of Berwick upon Tweed, shall or may be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places, beyond the seas, which are or at any time hereafter shall be within or without the Dominions of his Majesty, his heirs or successors; (3) and that every such imprisonment is hereby enacted and adjudged to be illegal; (4) and that if any of the said subjects now is, or hereafter shall be so imprisoned, every such person and persons so imprisoned, shall and may for every such imprisonment maintain, by virtue of this act, an action or actions of false imprisonment, in any of his Majesty's Courts of Record, against the person or persons by whom he or she shall be so committed, detained, imprisoned, sent prisoner or transported, contrary to the true meaning of this act, and against all or any person or persons that shall frame, contrive, write, seal or countersign any warrant or writing for such commitment, detainer, imprisonment, or transportation, or shall be advising, aiding, or assisting in the same, or any of them; (5) and the plaintiff in every such action shall have judgement to recover his treble costs, besides damages, which damages so to be given shall not be less than £500; (6) in which action no delay, stay or stop of proceeding by rule, order or command, nor no injunction, protection or privelege whatsoever, nor any other than one imparlance, shall be allowed; excepting such rule of the Court wherein such action shall depend, made in open Court, as shall be thought in Justice necessary for special cause to be expressed in the said rule; (7) and the person or persons who shall knowingly frame, contrive, write, seal, or countersign any warrant for such commitment, detainer, or transportation, or shall so commit, detain, imprison, or transport any person or persons, contrary to this act, or be any ways advising, aiding or assisting therein, being lawfully convicted thereof, shall be disabled from thenceforth to bear any office of trust or profit within the said Realm of England, Dominion of Wales, or town of Berwick upon Tweed, or any of the islands, territories or dominions thereunto belonging; (8) and shall incur and sustain the pains, penalties, and forfeitures limited, ordained, and provided, in and by the statute of provision and Præmunire, made in the 16th year of King Richard the second; (9) and be incapable of any pardon from the King, his heirs or successors, of the said forfeitures, losses, or disabilities, or any of them.

Penalty for such imprisonment.

16 Rich. 2, c. 5

Persons receiving earnest, upon contracts to be transported, excepted.

XIII. Provided always, That nothing in this act shall extend to give benefit to any person who shall by contract in writing, agree with any merchant or owner of any plantation, or other person whatsoever, to be transported to any parts beyond the seas, and receive earnest upon such

THE HAB. CORPUS ACT.

agreement, altho' that afterwards such person shall renounce such contract.

Persons convicted of felony and praying transportation, excepted.

XIV. Provided always, and be it enacted, That if any person or persons lawfully convicted of any felony, shall in open court pray to be transported beyond the seas, and the Court shall think fit to leave him or them in prison for that purpose, such person or persons may be transported into any parts beyond the seas; this act or any thing herein contained to the contrary notwithstanding.

Imprisonments before the 1st of June 1679, excepted.

XV. Provided also, and be it enacted, That nothing herein contained shall be deemed, construed or taken to extend to the imprisonment of any person before the first day of June, one thousand six hundred and seventy-nine, or to any thing advised, procured or otherwise done relating to such imprisonment; any thing herein contained to the contrary notwithstanding.

Offenders may be sent to be tried where their offences were commited.

XVI. Provided also, That if any person or persons at any time resiant in this Realm, shall have committed any capital offence in Scotland or in Ireland, or in any of the islands or foreign plantations of the King, his heirs or successors, where he or she ought to be tried for such offence, such person or persons may be sent to such place, there to receive such trial in such manner as the same might have been used before the making of this act; any thing herein contained to the contrary notwithstanding.

Prosecutions for offences, within what time to be made.

XVII. Provided also, and be it enacted, That no person or persons shall be sued, impleaded, molested, or troubled for any offence against this act, unless the party offending be sued or impleaded for the same within 2 years at the most, after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of 2 years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen.

After the assizes proclaimed, no prisoner to be removed, but before the judge of assize.

XVIII. And to the intent no person may avoid his trial at the assizes or general gaol-delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there; (2) Be it enacted, that after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any Habeas Corpus granted in pursuance of this act, but upon any such, Habeas Corpus shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain.

After assizes, they may have Habeas Corpus.

XIX. Provided nevertheless, That after the assizes are ended, any person or persons detained, may have his or her Habeas Corpus, according to the direction and intention of this act.

In suits for offence against this law, the defts may plead the general issue, &c.

XX. And be it also enacted by the authority aforesaid, That if any information, suit or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty or that they owe nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter in law, to have discharged the said defendant or defendants against the said information, suit, or action, and the same matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth or alledged the same matter in bar or discharge of such information, suit or action.

Persons committed as accessaries.

XXI. And because many times, persons charged with petty treason or felony, or accessories thereunto, are committed upon suspicion only,

whereupon they are bailable or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the Justices of the peace that committed the persons, and have the examination before them, or to other Justices of the Peace in the County;

(2) Be it therefore enacted, That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessory before the fact, to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act.

Accessories before the fact to petty treason or felony, shall not be removed or bailed otherwise than before this act made.

BILL OF RIGHTS, PASSED 1 WILLIAM AND MARY,

SESS. 2, CH. 2, 1689.

AN ACT FOR DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT, AND SETTLING THE SUCCESSION OF THE CROWN.

1 W. and M. 1689.

Whereas the Lords Spiritual and Temporal, and Commons, assembled at Westminster, lawfully, fully, and freely representing all the Estates of the People of this Realm, did, upon the thirteenth day of February, in the Year of our Lord, One Thousand six Hundred and Eighty-eight, present unto their Majesties then called and known by the name and stile of William and Mary, Prince and Princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said Lords and Commons, in the words following, viz:

The heads of abdication.

Whereas the late King James the Second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom.

Dispensing power.

1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of Parliament.

Committing prelates.

2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

Ecclesiastical commission.

3. By issuing and causing to be executed a commission under the great seal for erecting a court called, The court of commissioners for ecclesiastical causes.

Levying money.

4. By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by Parliament.

Standing army.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law.

Disarming protestants.

6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

Violating elections.

7. By violating the freedom of election of members to serve in Parliament.

8. By prosecutions in the court of King's bench, for matters and causes cognizable only in Parliament; and by divers other arbitrary and illegal courses.

Wrong prosecutions.

9. And whereas of late years, partial, corrupt, and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

Juries.

10. And excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects.

Excessive bail.

11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

Fines and punishments.

12. And several grants and promises made of fines and forfeitures, before any conviction or judgement against the persons, upon whom the same were to be levied.

Grants of fines, &c.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm.

And whereas the said late King James the Second having abdicated the government, and the throne being thereby vacant, his highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants, and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them, as were of right to be sent to Parliament, to meet and sit at Westminster upon the two and twentieth day of January, in this year one thousand six hundred eighty and eight, in order to such an establisment, as that their religion, laws, and liberties might not again be in danger of being subverted: upon which letters, elections have been accordingly made;

And thereupon the said lords spiritual and temporal, and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid; do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties, declare—

The subjects rights.

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

No dispensing power.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

Late dispensing illegal.

3. That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

Ecclesiastical courts illegal.

4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

Levying money.

5. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

Right to petition.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

Standing army.

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7. That the subjects which are protestants, may have arms for their defence suitable to their conditions, and as allowed by law.

Subjects arms.

8. That election of members of Parliament ought to be free.

Freedom of election.

9. That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

Freedom of speech.

Excessive bail.

10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

Juries.

11. That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason, ought to be freeholders.

Grants of forfeitures.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

Frequent parliaments.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premisses, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premisses, ought in any wise to be drawn hereafter into consequence or example.

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein.

Having therefore an entire confidence, That his said highness the prince of Orange, will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties:

Tender of the crown.

II. The said lords spiritual and temporal, and commons, assembled at Westminster, do resolve, That William and Mary, prince and princess of Orange, be, and be declared, King and Queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue to the princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange. And the lords spiritual and temporal, and commons, do pray the said prince and princess to accept the same accordingly.

New oaths of allegiance, &c.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

Allegiance.

I, A. B. do sincerely promise and swear, That I will be faithful and bear true allegiance to their Majesties, King WILLIAM and Queen MARY: So help me God.

BILL OF RIGHTS.

I, A. B. do swear, That I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, That princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state, or potentate hath, or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm: Supremacy.

So help me God.

Acceptance of the crown.

IV. Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said lords and commons contained in the said declaration.

The two houses to sit.

V. And thereupon their Majesties were pleased, That the said lords spiritual and temporal, and commons, being the two houses of Parliament, should continue to sit, and with their Majesties royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said lords spiritual and temporal, and commons, did agree and proceed to act accordingly.

Subjects liberties to be allowed.

VI. Now in pursuance of the premisses, the said lords spiritual and temporal, and commons, in Parliament assembled, for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a law made in due form by authority of Parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient, and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come.

Sections VII, VIII, IX, X, are irrelevant, (Edit.)

King's assent.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present Parliament, and shall stand, remain, and be the law of this realm forever; and the same are by their said Majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted, and established accordingly.

Non obstantes made void.

XII. And be it further declared and enacted by the authority aforesaid, That from and after this present session of parliament, no dispensation by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

Section XIII, irrelevant, (Edit.)

THE CONSTITUTION OF SOUTH CAROLINA, OF 26 MARCH, 1776.

(See Pamphlet Laws, Reports and Resolutions, 1823, p. 15.)

SOUTH CAROLINA, 1776.

In a Congress begun and holden at Charlestown, on Wednesday the first of November, one thousand seven hundred and seventy-five, and continued by divers adjournments to Tuesday the twenty-sixth day of March, one thousand seven hundred and seventy-six.

A CONSTITUTION,

OR FORM OF GOVERNMENT, AGREED TO AND RESOLVED UPON BY THE REPRESENTATIVES OF SOUTH CAROLINA.

Whereas, the British Parliament, claiming of late years a right to bind the North American Colonies by law, in all cases whatsoever, have enacted statutes for raising a revenue in those colonies, and disposing of such revenue as they thought proper, without the consent and against the will of the colonists. And whereas, it appearing to them that (they not being represented in Parliament) such claim was altogether unconstitutional, and if admitted, would at once reduce them, from the rank of freemen to a state of the most abject slavery; the said colonies, therefore, severally remonstrated against the passing, and petitioned for the repeal of those acts, but in vain; And whereas the said claim being persisted in, other unconstitutional and oppressive statutes have been since enacted, by which the powers of Admiralty Courts in the Colonies are extended beyond their ancient limits, and jurisdiction is given to such courts, in cases similar to those which in Great Britain are triable by jury—persons are liable to be sent to, and tried in Great Britain, for an offence created and made capital by one of those statutes, though committed in the colonies—the harbour of Boston was blocked up—people indicted for murder in the Massachusetts Bay may, at the will of a Governor, be sent for trial to any other colony, or even to Great Britain—the chartered constitution of government in that colony is materially altered—the English laws and a free government, to which the inhabitants of Quebec were entitled by the King's Royal Proclamation, are abolished and French laws are restored—the Roman Catholic Religion (although before tolerated and freely exercised there) and an absolute government are established in

that province, and its limits, extended through a vast tract of country so as to border on the free Protestant English settlements, with design of using a whole people differing in religious principles from the neighboring colonies, and subject to arbitrary power, as fit instruments to overawe and subdue the colonies. And whereas the delegates of all the colonies on this continent, from Nova Scotia to Georgia, assembled in a general Congress at Philadelphia, in the most dutiful manner laid their complaints at the foot of the throne, and humbly implored their sovereign that his royal authority and interposition might be used for their relief from the grievances occasioned by those statutes, and assured his Majesty that harmony between Great Britain and America, ardently desired by the latter, would be thereby immediately restored, and that the colonists confided in the magnanimity and justice of the King and Parliament for redress of the many other grievances under which they labored. And whereas these complaints being wholly disregarded, statutes still more cruel than those abovementioned have been enacted, prohibiting the intercourse of the colonies with each other, restricting their trade, and depriving many thousands of people of the means of subsistence, by restraining them from fishing on the American coast. And whereas large fleets and armies having been sent to America in order to enforce the execution of those laws, and to compel an absolute and implicit submission to the will of a corrupt and despotick administration, and in consequence thereof, hostilities having been commenced in the Massachusetts Bay, by the troops under command of General Gage, whereby a number of peaceable, helpless and unarmed people, were wantonly robbed and murdered, and there being just reason to apprehend that like hostilities would be committed in all the other colonies. The colonists were therefore driven to the necessity of taking up arms, to repel force by force, and to defend themselves and their properties against lawless invasions and depredations. Nevertheless, the delegates of the said colonies assembled in another Congress at Philadelphia, anxious to procure a reconciliation with Great Britain upon just and constitutional principles, supplicated his Majesty to direct some mode by which the united applications of his faithful colonists might be improved into a happy and permanent reconciliation; that in the mean time measures might be taken for preventing the further destruction of their lives, and that such statutes as immediately distressed any of the colonists might be repealed. And whereas, instead of obtaining that justice, to which the colonists were and are of right entitled, the unnatural civil war into which they were thus precipitated and are involved, hath been prosecuted with unremitted violence, and the Governors and others bearing the royal commission in the colonies, having broken the most solemn promises and engagements, and violated every obligation of honor, justice and humanity, have caused the persons of divers good people to be seized and imprisoned, and their properties to be forcibly taken and detained, or destroyed, without any crime or forfeiture—excited domestic insurrections—proclaimed freedom to servants and slaves, enticed or stolen them from, and armed them against their masters—instigated and encouraged the Indian nations to war against the colonies—dispensed with the law of the land, and substituted the law martial in its stead—killed many of the colonists—burned several towns, and threatened to burn the rest, and daily endeavor by a conduct which has sullied the British arms, and would disgrace even savage nations, to effect the ruin and destruction of the colonies. And whereas a statute hath been lately passed, whereby, under pretence that the said colonies are in open rebellion, all trade and commerce whatsoever with them

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is prohibited—vessels belonging to their inhabitants trading in, to, or from the said colonies, with the cargoes and effects on board such vessels, are made lawful prize, and the masters and crews of such vessels are subjected by force to act on board the King's ships against their country and dearest friends; and all seizures and detention or destruction of the persons and properties of the colonists which have at any time been made or committed for withstanding or suppressing the said pretended rebellion, and which shall be made in pursuance of the said act, or for the service of the public, are justified, and persons sueing for damages in such cases, are, on failing in their suits, subjected to payment of very heavy expenses. And whereas large reinforcements of troops and ships have been ordered and are daily expected in America for carrying on war against each of the united colonies by the most vigorous exertions. And whereas in consequence of a plan recommended by the Governors, and which seems to have been concerted between them and their ministerial masters, to withdraw the usual officers, and thereby loosen the bands of government and create anarchy and confusion in the colonies. Lord William Campbell, late Governor, on the fifteenth day of September last, dissolved the General Assembly of this colony, and no other hath been since called, although by law the sitting and holding of General Assemblies cannot be intermitted above six months—and having used his utmost efforts to destroy the lives, liberties and properties of the good people here, whom by the duty of his station he was bound to protect, withdrew himself from the colony, and carried off the great seal and the royal instructions to Governors. And whereas the judges of courts of law here, have refused to exercise their respective functions, so that it is become indispensably necessary that during the present situation of American affairs, and until an accommodation of the unhappy differences between Great Britain and America can be obtained, (an event which, though traduced and treated as rebels, we still earnestly desire) some mode should be established by common consent, and for the good of the people, the origin and end of all governments, for regulating the internal polity of this colony. The Congress being vested with powers competent for the purpose, and having fully deliberated touching the premises, do therefore resolve:

I. That this Congress being a full and free representation of the people of this colony, shall henceforth be deemed and called the General Assembly of South Carolina, and as such shall continue until the twenty-first day of October next, and no longer.

II. That the General Assembly shall, out of their own body, elect by ballot, a legislative Council, to consist of thirteen members, (seven of whom shall be a quorum) and to continue for the same time as the General Assembly.

III. That the General Assembly and the said legislative council shall jointly choose by ballot from among themselves, or from the people at large, a President and Commander-in-Chief, and a Vice President, of the Colony.

IV. That a member of the General Assembly being chosen and acting as President and Commander in Chief, or Vice President, or one of the legislative council, shall vacate his seat in the General Assembly, and another person shall be elected in his room; and if one of the legislative council is chosen President and Commander in Chief, or Vice President, he shall lose his seat, and another person shall be elected in his stead.

V. That there be a Privy Council, whereof the Vice President of the colony shall of course be a member and President of the Privy Council, and that six other members be chosen by ballot, three by the General As-

sembly, and three by the legislative council; *Provided always*, that no officer in the army or navy in the service of the continent, or of this colony, shall be eligible. And a member of the general assembly, or of the legislative council, being chosen of the privy council, shall not thereby lose his seat in the general assembly, or in the legislative council, unless he be elected Vice President of the colony, in which case, he shall, and another person shall be chosen in his stead. The privy council (of which four to be a quorum) to advise the President and Commander in Chief when required, but he shall not be bound to consult them, unless in cases after mentioned.

VI. That the qualifications of President and Commander in Chief, and Vice President of the colony, and members of the legislative and privy council, shall be the same as of members of the General Assembly, and on being elected they shall take an oath of qualification in the general assembly.

VII. That the legislative authority be vested in the President and Commander in Chief, the General Assembly and legislative council. All money bills for the support of government shall originate in the general assembly, and shall not be altered or amended by the legislative council, but may be rejected by them. All other bills and ordinances may take rise in the general assembly or legislative council, and may be altered, amended or rejected by either. Bills having passed the general assembly and legislative council, may be assented to or rejected by the President and Commander in Chief. Having received his assent, they shall have all the force and validity of an act of general assembly of this colony. And the general assembly, and legislative council respectively, shall enjoy all other privileges which have at any time been claimed or exercised by the Commons house of Assembly, but the legislative council shall have no power of expelling their own members.

VIII. That the general assembly and legislative council may adjourn themselves respectively, and the President and Commander in Chief shall have no power to adjourn, prorogue or dissolve them, but may, if necessary, call them before the time to which they shall stand adjourned. And where a bill has been rejected, it may, on a meeting after an adjournment of not less than three days of the general assembly and legislative council, be brought in again.

IX. That the general assembly and legislative council shall each choose their respective speakers, and their own officers, without control.

X. That if a member of the general assembly or of the legislative council shall accept any place of emolument or any commission except in the militia, he shall vacate his seat, and there shall thereupon be a new election, but he shall not be disqualified from serving upon being re-elected.

XI. That on the last Monday in October next, and the day following, and on the same days of every second year thereafter, members of the general assembly shall be chosen, to meet on the first Monday in December then next, and continue for two years from the said last Monday in October. The general assembly to consist of the same number of members as this Congress does, each parish and district having the same representation as at present, viz.: the parish of St. Philip and St. Michael, Charlestown, thirty members; the parish of Christ Church, six members; the parish of St. John in Berkely county, six members; the parish of St. Andrew, six members; the parish of St. George Dorchester, six members; the parish of St. James Goose Creek, six members; the parish of St. Thomas and St. Dennis, six members; the parish of St. Paul, six members; the parish of St. Bartholemew, six members; the parish of St.

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Helena, six members; the parish of St. James Santee, six members; the parish of Prince George, Winyaw, six members; the parish of Prince Frederick, six members; the parish of St. John, in Colleton County, six members; the parish of St. Peter, six members; the parish of Prince William, six members; the parish of St. Stephen, six members; the district to the eastward of Wateree river, ten members; the district of Ninety six, ten members; the district of Saxe Gotha, six members; the district between Broad and Saluda rivers, in three divisions, viz: the lower district, four members; the Little River district, four members; the upper or Spartan district, four members; the district between Broad and Catawba rivers, ten members; the district called the New Acquisition, ten members; the parish of St. Mathew, six members; the parish of St. David, six members; the district between Savannah river and the North fork of Edisto, six members. And the election of the said members shall be conducted as near as may be agreeable to the directions of the election act; and where there are no churches or church wardens in a district or parish, the general assembly, at some convenient time before their expiration, shall appoint places of election, and persons to receive votes and make returns. The qualifications of electors shall be the same as required by law; but persons having property, which, according to the rate of the last preceding tax, is taxable at the sums mentioned in the election act, shall be entitled to vote, though it was not actually taxed, having the other qualifications mentioned in that act; electors shall take an oath of qualification, if required by the returning officer. The qualification of the elected to be the same as mentioned in the election act, and construed to mean clear of debt.

XII. That if any parish or district neglects or refuses to elect members, or if the members chosen do not meet in General Assembly, those who do meet shall have the powers of a General Assembly; not less than forty nine members shall make a house to do business, but the speaker or any seven members may adjourn from day to day.

XIII. That as soon as may be, after the first meeting of the General Assembly, a President and Commander in Chief, a Vice President of the Colony and privy Council, shall be chosen in manner and for the time above mentioned, and till such choice be made, the former President and Commander in Chief, and Vice President of the Colony and privy council, shall continue to act as such.

XIV. That in case of the death of the President and Commander in Chief, or his absence from the Colony, the Vice President of the Colony shall succeed to his office, and the privy council shall choose out of their own body a Vice President of the Colony; and in case of the death of the Vice President of the Colony, or his absence from the Colony, one of the privy council (to be chosen by themselves) shall succeed to his office, until a nomination to those offices respectively, by the General Assembly and Legislative Council, for the remainder of the time for which the officer so dying or being absent, was appointed.

XV. That the delegates of this Colony in the Continental Congress, be chosen by the General Assembly and Legislative Council, jointly by ballot in the General Assembly.

XVI. That the Vice President of the Colony and the Privy Council, or the Vice President and a majority of the Privy Council for the time being, shall exercise the powers of a Court of Chancery, and there shall be an Ordinary who shall exercise the powers heretofore exercised by that officer in this Colony.

XVII. That the jurisdiction of the Court of Admiralty be confined to maritime causes.

XVIII. That all suits and process depending in any court of law or equity, may, if either party shall be so inclined, be proceeded in and continued to a final ending, without being obliged to commence *de novo*. And the judges of the courts of law shall cause jury lists to be made, and juries to be summoned, as near as may be, according to the directions of the acts of the General Assembly in such cases provided.

XIX. That justices of the peace shall be nominated by the General Assembly and commissioned by the President and Commander in Chief, during pleasure. They shall not be entitled to fees except on prosecutions for felony, and not acting in the magistracy, they shall not be entitled to the privileges allowed to them by law.

XX. That all other judicial officers shall be chosen by ballot, jointly by the General Assembly and Legislative Council, and except the judges of the Court of Chancery, commissioned by the President and Commander in Chief, during good behaviour, but shall be removed, on address of the General Assembly and Legislative Council.

XXI. That Sheriffs qualified as by law directed, shall be chosen in like manner by the General Assembly and Legislative Council, and commissioned by the President and Commander in Chief for two years only.

XXII. That the Commissioners of the Treasury, the Secretary of the Colony, Register of mesne conveyances, Attorney General, and powder receiver, be chosen by the General Assembly and Legislative Council, jointly by ballot, and commissioned by the President and Commander in Chief during good behaviour, but shall be removed on address of the General Assembly and Legislative Council.

XXIII. That all field officers in the army, and all captains in the navy, shall be, by the General Assembly and Legislative Council, chosen jointly by ballot, and commissioned by the President and Commander in Chief, and that all other officers in the army or navy shall be commissioned by the President and Commander in Chief.

XXIV. That in case of vacancy in any of the offices above directed to be filled by the General Assembly and Legislative Council, the President and Commander in Chief, with the advice and consent of the Privy Council, may appoint others in their stead, until there shall be an election by the General Assembly and Legislative council to fill their vacancies respectively.

XXV. That the President and Commander in Chief, with the advice and consent of the Privy Council, may appoint during pleasure, until otherwise directed by resolution of the General Assembly and Legislative Council, all other necessary officers, except such as are by law directed to be otherwise chosen.

XXVI. That the President and Commander in Chief shall have no power to make war or peace, or enter into any final treaty, without the consent of the General Assembly and Legislative Council.

XXVII. That if any parish or district shall neglect to elect a member or members on the day of election, or in case any person chosen a member of the General Assembly shall refuse to qualify and take his seat as such, or die, or depart the Colony, the said General Assembly shall appoint proper days for electing a member or members of the said General Assembly in such cases respectively; and on the death of a member of the legislative or privy council, another member shall be chosen in his room, in manner above mentioned, for the election of members of the legislative and privy council respectively.

XXVIII. That the resolutions of the Continental Congress, now of force in this colony, shall so continue until altered or revoked by them.

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XXIX. That the resolutions of this or any former Congress of this colony, and all laws now of force here (and not hereby altered) shall so continue, until altered or repealed by the legislature of this colony, unless where they are temporary, in which case they shall expire at the times respectively limited for their duration.

XXX. That the executive authority be vested in the President and Commander in Chief, limited and restrained as aforesaid.

XXXI. That the President and Commander in Chief, the Vice President of the colony and privy council respectively, shall have the same personal privileges as are allowed by act of assembly, to the Governor, Lieutenant Governor, and privy council.

XXXII. That all persons now in office shall hold their commissions until there shall be a new appointment in manner above directed, at which time all commissions not derived from authority of the congress of this colony, shall cease and be void.

XXXIII. That all persons who shall be chosen and appointed to any office or to any place of trust, before entering upon the execution of office, shall take the following oath: "I, A. B. do swear that I will, to the utmost of my power, support, maintain and defend the Constitution of South Carolina, as established by Congress on the twenty-sixth day of March, one thousand seven hundred and seventy six, until an accommodation of the differences between Great Britain and America shall take place, or I shall be released from this oath by the legislative authority of the said colony—So help me God." And all such persons shall also take an oath of office.

XXXIV. That the following yearly salaries be allowed to the public officers undermentioned: the President and Commander in Chief, nine thousand pounds; the Chief Justice and the Assistant Judges, the salaries, respectively, as by act of Assembly established; the Attorney General, two thousand one hundred pounds, in lieu of all charges against the public for fees upon criminal prosecutions; the Ordinary, one thousand pounds; the three Commissioners of the Treasury, two thousand pounds each; and all other public officers shall have the same salaries as are allowed such officers, respectively, by act of Assembly.

By order of the Congress, March 26th, 1776.

WILLIAM HENRY DRAYTON, *President.*

ATTESTED,

PETER TIMOTHY, *Secretary.*

*ACT ESTABLISHING AN OATH OF ABJURATION AND ALLEGIANCE.

PASSED 13TH FEBRUARY, 1777.

SOUTH CAROLINA.

At a General Assembly begun and holden at Charlestown, on Friday, the sixth day of December, in the year of our Lord one thousand seven hundred and seventy-six, and from thence continued by divers adjournments to the thirteenth day of February, in the year of our Lord one thousand seven hundred and seventy-seven.

AN ORDINANCE

FOR ESTABLISHING AN OATH OF ABJURATION AND ALLEGIANCE.

Whereas, in all States, Protection and Allegiance are or ought to be reciprocal, and those who will not bear the latter are not entitled to the benefits of the former, *Be it therefore Ordained*, by his Excellency John Rutledge, Esquire, President and Commander in Chief, in and over the State of South Carolina, by the Honourable the Legislative Council and General Assembly of the said State, and by the authority of the same, That the President and Commander in Chief for the time being, with the advice of the Privy Council, shall appoint proper persons to administer the following Oath to all the late Officers of the King of Great Britain, and all other persons (other than prisoners of war) who now are, or hereafter may come into this State, as they, the said President and Privy Council shall suspect of holding principles injurious to the rights of this State: "I, A. B. do acknowledge the State of South Carolina is and of right ought to be a free, independent, and sovereign state, and that the people thereof owe no allegiance or obedience to George the Third, King of Great Britain, and I do renounce, refuse, and abjure, any allegiance or obedience to him; and I do swear (or affirm, as the case may be) that I will to the utmost of my power, support, maintain and defend the said State against the said King George the Third, and his heirs and successors, and his or their abbettors, assistants and adherents. And I do farther swear that I will bear Faith and true Allegiance to the said State,

* This act is taken from the original manuscript.

ACT FOR AN OATH OF ALLEGIANCE.

and to the utmost of my power, will support, maintain, and defend the Freedom and Independence thereof."

And be it further Ordained, by the authority aforesaid, That if any person or persons to whom the said Oath shall be tendered, shall refuse to take the same, then he or they shall within sixty days after such refusal, or as soon as may be thereafter, be sent off from this State, taking his or their family or families with them, if he or they shall think fit so to do, to Europe or the West Indies, at the public expense, except such persons as in the opinion of the President and Privy Council, are able to pay their own expenses. *Provided*, nevertheless, that all and every such person and persons, shall be at liberty to sell and dispose of his or their estates and interest in this State, and (after satisfying all just and equitable claims and demands which shall be brought against him or them) to carry the amount and produce thereof with him or them, and also to nominate and appoint an Attorney or Attornies (to be approved by the President and Privy Council) to sell and dispose of his or their estate or estates, and in like manner with the subjects of this State to demand security or sue for, as the case may be, and recover in his or their name or names all such debts and sums of money as are or shall be due, owing, or payable to him or them respectively, and to remit the same to him or them respectively in such way and manner as they shall think fit, Provided it be not repugnant to the Resolutions of Congress or Laws of this State. *And be it further Ordained, by the authority aforesaid,* that if any person or persons so sent off from the State shall return to the same, then he or they shall be adjudged guilty of Treason against this State, and shall upon conviction thereof, suffer Death as a Traitor.

And be it further Ordained, by the authority aforesaid, that all and every Person or Persons in this State who shall hereafter accept or take any Office or Place of Trust or emolument under the Authority thereof, shall, before he enters upon the execution of such Office or Place of Trust, take the oath before mentioned.

In the Council Chamber, the thirteenth day of February, 1777.

ASSENTED TO:

J. RUTLEDGE.

HUGH RUTLEDGE,
Speaker of the Legislative Council.

JOHN MATHEWS,
Speaker of the General Assembly.

THE CONSTITUTION OF SOUTH CAROLINA,

19TH MARCH, 1778.

[*See Pamphlet Laws, Reports and Resolutions*, 1823, *p.* 156 *et seq.*]

SOUTH CAROLINA.

At a General Assembly begun and holden at Charlestown, on Monday the fifth day of January, in the year of our Lord one thousand seven hundred and seventy-eight, and from thence continued by divers adjournments to the nineteenth day of March, in the year of our Lord one thousand seven hundred and seventy-eight.

An Act for establishing the Constitution of the State of South Carolina.

Whereas, the constitution or form of government agreed to and resolved upon by the freemen of this country, met in Congress the twenty sixth day of March, one thousand seven hundred and seventy six, was temporary only, and suited to the situation of their public affairs at that period, looking forward to an accommodation with Great Britain, an event then desired. And whereas, the United Colonies of America have been since constituted independent states, and the political connexion heretofore subsisting between them and Great Britain entirely dissolved by the declaration of the honourable the Continental Congress, dated the fourth day of July, one thousand seven hundred and seventy six, for the many great and weighty reasons therein particularly set forth. It therefore becomes absolutely necessary to frame a constitution suitable to that great event.

Be it therefore constituted and enacted, by his Excellency Rawlins Lowndes, Esq. President and Commander in Chief, in and over the State of South Carolina, by the honourable the legislative council and General Assembly, and by the authority of the same:

That the following articles agreed upon by the freemen of this state, now met in general assembly, be deemed and held the constitution and form of government of the said state, unless altered by the legislative authority thereof, which constitution or form of government shall immediately take place and be of force from the passing of this act, excepting such parts as are hereafter mentioned and specified.

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I. That the style of this country be hereafter, the State of South Carolina.

II. That the legislative authority be vested in a general assembly, to consist of two distinct bodies, a senate and house of representatives, but that the legislature of this state, as established by the constitution or form of government, passed the twenty sixth of March, one thousand seven hundred and seventy six, shall continue and be in full force until the twenty ninth day of November ensuing.

III. That as soon as may be, after the first meeting of the senate and house of representatives, and at every first meeting of the senate and house of representatives thereafter, to be elected by virtue of this constitution, they shall jointly in the house of representatives, choose by ballot from among themselves or from the people at large, a governor and commander in chief, a lieutenant-governor, both to continue for two years, and a privy council, all of the protestant religion; and till such choice shall be made, the former president or governor and commander in chief, and vice president or lieutenant governor as the case may be, and privy council, shall continue to act as such.

IV. That a member of the senate or house of representatives, being chosen and acting as governor and commander in chief, or lieutenant governor, shall vacate his seat and another person shall be elected in his room.

V. That every person who shall be elected governor and commander in chief of the state, or lieutenant-governor, or a member of the privy council, shall be qualified as followeth; (that is to say,) the governor and lieutenant-governor shall have been residents in this state for ten years, and the members of the privy council, five years, preceding their said election, and shall have in this state, a settled plantation or freehold in their, and each of their own right, of the value of at least ten thousand pounds currency, clear of debt, and on being elected, they shall respectively take an oath of qualification in the house of representatives.

VI. That no future governor and commander in chief who shall serve for two years, shall be eligible to serve in the said office after the expiration of the said term, until the full end and term of four years.

VII. That no person in this state shall hold the office of governor thereof, or lieutenant-governor, and any other office or commission, civil or military, (except in the militia) either in this or any other state, or under the authority of the continental congress, at one and the same time.

VIII. That in case of the impeachment of the governor and commander in chief, or his removal from office, death, resignation or absence from the state, the lieutenant governor shall succeed to his office, and the privy council shall choose out of their own body, a lieutenant-governor of the state. And in case of the impeachment of the lieutenant governor, or his removal from office, death, resignation or absence from the state, one of the privy council, to be chosen by themselves, shall succeed to his office until a nomination to those offices respectively, by the senate and house of representatives, for the remainder of the time for which the officer so impeached, removed from office, dying, resigning, or being absent, was appointed.

IX. That the privy council shall consist of the lieutenant-governor for the time being, and eight other members, five of whom shall be a quorum, to be chosen as before directed; four to serve for two years, and four for one year, and at the expiration of one year, four others shall be chosen in the room of the last four, to serve for two years, and all future mem-

bers of the privy council shall thenceforward be elected to serve two years, whereby there will be a new election every year for half the privy council, and a constant rotation established; but no member of the privy council who shall serve for two years, shall be eligible to serve therein after the expiration of the said term, until the full end and term of four years; *provided always*, that no officer of the army or navy in the service of the continent or this state, nor judge of any of the courts of law, shall be eligible, nor shall the father, son or brother to the governor for the time being, be elected in the privy council during his administration. A member of the senate and house of representatives being chosen of the privy council, shall not thereby lose his seat in the senate or house of representatives, unless he be elected lieutenant-governor, in which case he shall, and another person shall be chosen in his stead. The privy council is to advise the governor and commander in chief when required, but he shall not be bound to consult them unless directed by law. If a member of the privy council shall die or depart this state during the recess of the general assembly, the privy council shall choose another to act in his room, until a nomination by the senate and house of representatives, shall take place. The clerk of the privy council shall keep a regular journal of all their proceedings, in which shall be entered the yeas and nays on every question, and the opinion with the reasons at large, of any member who desires it; which journal shall be laid before the legislature when required by either house.

X. That in case of the absence from the seat of government, or sickness of the governor and lieutenant-governor, any one of the privy council may be empowered by the governor, under his hand and seal, to act in his room, but such appointment shall not vacate his seat in the senate, house of representatives or privy council.

XI. That the executive authority be vested in the governor and commander in chief, in manner herein mentioned.

XII. That each parish and district throughout this state, shall, on the last Monday in November next and the day following, and on the same days of every succeeding year thereafter, elect by ballot one member of the senate, except the district of St. Philip and St. Michael's parishes, Charleston, which shall elect two members; and except also the district between Broad and Saluda rivers, in three divisions viz: the Lower district, the Little River district, and the Upper or Spartan district, each of which said divisions shall elect one member; and except the parishes of St. Matthew, and Orange, which shall elect one member; and also except the parishes of Prince George and All Saints, which shall elect one member: And the election of senators for such parishes respectively, shall, until otherwise altered by the legislature, be at the parish of Prince George for the said parish and the parish of All Saints, and at the parish of St. Matthew for that parish and the parish of Orange; to meet on the first Monday in January then next, at the seat of government, unless the casualties of war, or contagious disorders, should render it unsafe to meet there, in which case, the governor and commander in chief for the time being, may, by proclamation, with the advice and consent of the privy council, appoint a more secure and convenient place of meeting; and to continue for two years from the said last Monday in November; and that no person shall be eligible to a seat in the said senate unless he be of the protestant religion, and hath attained the age of thirty years, and hath been a resident in this state at least five years. Not less than thirteen members shall be a quorum to do business, but the president or any three members may adjourn from day to day. No person who resides in the parish or district for which he is elected, shall take his seat in the

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senate, unless he possess a settled estate and freehold in his own right in the said parish or district, of the value of two thousand pounds currency at least, clear of debt; and no non resident shall be eligible to a seat in the said senate, unless he is owner of a settled estate and freehold in his own right, in the parish or district where he is elected, of the value of seven thousand pounds currency at least, also clear of debt.

XIII. That on the last Monday in November next, and the day following, and on the same days of every second year thereafter, members of the house of representatives shall be chosen, to meet on the first Monday in January then next, at the seat of government, unless the casualties of war or contagious disorders should render it unsafe to meet there, in which case the governor and commander in chief for the time being, may, by proclamation, with the advice and consent of the privy council, appoint a more secure and convenient place of meeting, and to continue for two years from the said last Monday in November. Each parish and district within this state shall send members to the general assembly in the following proportions, (that is to say,) the parish of St. Philip and St. Michael's, Charleston, thirty members; the parish of Christ Church, six members; the parish of St. John's, in Berkely county, six members; the parish of St. Andrew, six members; the parish of St. George, Dorchester, six members; the parish of St. James, Goose Creek, six members; the parish of St. Thomas and St. Dennis, six members; the parish of St. Paul, six members; the parish of St. Bartholomew, six members; the parish of St. Helena, six members; the parish of St. James, Santee, six members; the parish of Prince George, Winyaw, four members; the parish of All Saints, two members; the parish of Prince Frederick, six members; the parish of St. John, in Colleton county, six members; the parish of St. Peter, six members; the parish of Prince William, six members; the parish of St. Stephen, six members; the district to the eastward of Wateree river, ten members; the district of Ninety six, ten members; the district of Saxe Gotha, six members; the district between Broad and Saluda rivers, in three divisions, viz: the Lower district, four members; the Little River district, four members; the Upper or Spartan district, four members; the district between Broad and Catawba rivers, ten members; the district called the New Acquisition, ten members; the parish of St. Matthew, three members; the parish of Orange, three members; the parish of St. David, six members; the district between the Savannah river and the North fork of Edisto, six members. And the election of the said members shall be conducted as near as may be agreeable to the directions of the present or any future election act or acts; and where there are no Churches or Church Wardens in a district or parish, the house of representatives, at some convenient time before their expiration, shall appoint places of election, and persons to receive votes and make returns. The qualification of electors shall be that every free white man, and no other person, who acknowledges the being of a God, and believes in a future state of rewards and punishments, and who has attained to the age of one and twenty years, and hath been a resident and an inhabitant in this state for the space of one whole year before the day appointed for the election, (he offers to give his vote at) and hath a freehold at least of fifty acres of land, or a town lot, and hath been legally seized and possessed of the same at least six months previous to such election, or hath paid a tax the preceding year, or was taxable the present year, at least six months previous to the said election, in a sum equal to the tax on fifty acres of land, to the support of this government, shall be deemed a person qualified to vote for, and shall be capable of electing a representative, or representatives, to

serve as a member or members in the senate and house of representatives, for the parish or district where he actually is a resident, or in any other parish or district in this state where he hath the like freehold. Electors shall take an oath or affirmation of qualification, if required by the returning officer. No person shall be eligible to sit in the house of representatives unless he be of the Protestant religion, and hath been a resident in this state for three years previous to his election. The qualification of the elected, if residents in the parish or district for which they shall be returned, shall be the same as mentioned in the election act, and construed to mean clear of debt. But no non-resident shall be elegible to a seat in the house of representatives unless he is owner of a settled estate and freehold in his own right of the value of three thousand and five hundred pounds currency at least, clear of debt, in the parish or district for which he is elected.

XIV. That if any parish or district neglects or refuses to elect members, or if the members chosen do not meet in general assembly, those who do meet shall have the powers of the general assembly. Not less than sixty nine members shall make a house of representatives to do business, but the speaker or any seven members may adjourn from day to day.

XV. That at the expiration of seven years after the passing of this Constitution, and at the end of every fourteen years thereafter, the representation of the whole state shall be proportioned in the most equal and just manner according to the particular and comparitive strength and taxable property of the different parts of the same, regard being always had to the number of white inhabitants and such taxable property.

XVI. That all money bills for the support of government shall originate in the house of representatives, and shall not be altered or amended by the senate, but may be rejected by them, and that no money be drawn out of the public treasury but by the legislative authority of the state. All other bills and ordinances may take rise in the senate or house of representatives, and be altered, amended or rejected by either. Acts and ordinances having passed the general assembly shall have the great seal affixed to them by a joint committee of both houses, who shall wait upon the Governor to receive and return the seal, and shall then be signed by the President of the Senate and Speaker of the House of Representatives, in the Senate house, and shall thenceforth have all the force and validity of a law, and be lodged in the Secretary's office. And the senate and house of representatives respectively, shall enjoy all other priveleges which have at any time been claimed or exercised by the Commons house of assembly.

XVII. That neither the senate nor house of representatives shall have power to adjourn themselves for any longer time than three days, without the mutual consent of both. The Governor and Commander in Chief shall have no power to adjourn, prorogue or dissolve them, but may, if necessary, by and with the advice and consent of the privy council, convene them before the time to which they shall stand adjourned. And where a bill hath been rejected by either house, it shall not be brought in again that session, without leave of the house, and a notice of six days being previously given.

XVIII. That the senate and house of representatives shall each choose their respective officers by ballot, without controul, and that during a recess, the President of the Senate and Speaker of the House of Representatives shall issue writs for filling up vacancies occasioned by death in their respective houses, giving at least three weeks and not more than thirty five days previous notice of the time appointed for the election.

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XIX. That if any parish or district shall neglect to elect a member or members on the day of election, or in case any person chosen a member of either house, shall refuse to qualify and take his seat as such, or die, or depart the state, the senate or house of representatives as the case may be, shall appoint proper days for electing a member or members, in such cases respectively.

XX. That if any member of the senate or house of representatives shall accept any place of emolument, or any commission (except in the militia, or commission of the peace, and except as is excepted in the tenth article) he shall vacate his seat, and there shall thereupon be a new election, but he shall not be disqualified from serving upon being re-elected, unless he is appointed Secretary of the State, a Commissioner of the Treasury, an Officer of the Customs, Register of Mesne Conveyances, a Clerk of either of the Courts of justice, Sheriff, Powder-reviewer, Clerk of the Senate, House of Representatives or Privy Council, Surveyor General, or Commissary of Military stores, which officers are hereby declared disqualified from being members either of the senate or house of representatives.

XXI. And whereas the ministers of the gospel are by their profession dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their function,—therefore no minister of the gospel or public preacher of any religious persuasion, while he continues in the exercise of his pastoral function, and for two years after, shall be eligible either as Governor, Lieutenant Governor, a member of the Senate, House of Representatives, or Privy Council in this state.

XXII. That the delegates to represent this state in the Congress of the United States, be chosen annually by the senate and house of representatives jointly, by ballot, in the house of representatives, and nothing contained in this Constitution shall be construed to extend to vacate the seat of any member who is or may be a delegate from this state to Congress as such.

XXIII. That the form of impeaching all officers of the state for mal and corrupt conduct in their respective offices, not amenable to any other jurisdiction, be vested in the house of representatives. But that it shall always be necessary that two third parts of the members present do consent to and agree in such impeachment. That the senators and such of the judges of this state as are not members of the house of representatives, be a court for the trial of impeachments, under such regulations as the legislature shall establish, and that previous to the trial of every impeachment, the members of the said court shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence, and no judgement of the said court, except judgement of acquital, shall be valid, unless it shall be assented to by two third parts of the members then present; and on every trial, as well on impeachments as others, the party accused shall be allowed counsel.

XXIV. That the Lieutenant Governor of the state and a majority of the privy council for the time being, shall, until otherwise altered by the legislature, exercise the powers of a Court of Chancery; and there shall be Ordinaries appointed in the several districts of this state, to be chosen by the senate and house of representatives jointly by ballot, in the house of representatives, who shall, within their respective districts, exercise the powers heretofore exercised by the Ordinary; and until such appointment is made, the present Ordinary in Charleston shall continue to exercise that office as heretofore.

XXV. That the jurisdiction of the Court of Admiralty be confied to maritime causes.

XXVI. That justices of the peace shall be nominated by the senate and house of representatives jointly, and commissioned by the Governor and Commander in Chief during pleasure. They shall be entitled to receive the fees heretofore established by law; and not acting in the magistracy, they shall not be entitled to the priveleges allowed them by law.

XXVII. That all other judicial officers shall be chosen by ballot, jointly by the Senate and House of Representatives, and, except the judges of the Court of Chancery, commissioned by the Governor and Commander in Chief during good behaviour, but shall be removed on address of the Senate and House of Representatives.

XXVIII. That the Sheriffs, qualified as by law directed, shall be chosen in like manner by the Senate and House of Representatives, when the Governor, Lieutenant Governor and Privy Council are chosen, and commissioned by the Governor and Commander in Chief, for two years, and shall give security as required by law, before they enter on the execution of their office. No sheriff who shall have served for two years shall be eligible to serve in the said office after the expiration of the said term, until the full end and term of four years, but shall continue in office until such choice be made; nor shall any person be eligible as sheriff in any district, unless he shall have resided therein for two years previous to the election.

XXIX. That two Commissioners of the Treasury, the Secretary of the State, the Register of mesne conveyances in each district, Attorney General, Surveyor General, Powder Receiver, Collectors and Comptrollers of the Customs and Waiters, be chosen in like manner by the Senate and House of Representatives jointly, by ballot, in the House of Representatives, and commissioned by the Governor and Commander in Chief, for two years; that none of the said officers, respectively, who shall have served for four years, shall be eligible to serve in the said offices after the expiration of the said term, until the full end and term of four years, but shall continue in office until a new choice be made. *Provided*, that nothing herein contained shall extend to the several persons appointed to the above offices respectively, under the late constitution: and that the present and all future Commissioners of the Treasury, and Powder receivers, shall each give bond with approved security agreeable to law.

XXX. That all the officers in the army and navy of this State, of and above the rank of captain, shall be chosen by the Senate and House of Representatives jointly, by ballot in the House of Representatives, and commissioned by the Governor and Commander in Chief, and that all other officers in the Army and Navy of this State, shall be commissioned by the Governor and Commander in Chief.

XXXI. That in case of vacancy in any of the offices above directed to be filled by the Senate and House of Representatives, the Governor and Commander in Chief, with the advice and consent of the Privy Council, may appoint others in their stead, until there shall be an election by the Senate and House of Representatives, to fill those vacancies respectively.

XXXII. That the Governor and Commander in Chief, with the advice and consent of the Privy Council, may appoint during pleasure, until otherwise directed by law, all other necessary officers, except such as are now by law directed to be otherwise chosen.

XXXIII. That the Governor and Commander in Chief shall have no power to commence war, or conclude peace, or enter into any final treaty, without the consent of the Senate and House of Representatives.

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XXXIV. That the resolutions of the late Congress of this State, and all laws now of force here (and not hereby altered) shall so continue until altered or repealed by the legislature of this State, unless where they are temporary, in which case, they shall expire at the times respectively limited for their duration.

XXXV. That the Governor and Commander in Chief for the time being, by and with the advice and consent of the Privy Council, may lay embargoes, or prohibit the exportation of any commodity, for any time not exceeding thirty days, in the recess of the General Assembly.

XXXVI. That all persons who shall be chosen and appointed to any office, or to any place of trust, civil or military, before entering upon the execution of office, shall take the following oath. "I, A. B. do acknowledge the State of South Carolina to be a free, sovereign and independent State, and that the people thereof owe no allegiance or obedience to George the Third, King of Great Britain, and I do renounce, refuse, and abjure any allegiance or obedience to him. And I do swear, (or affirm, as the case may be) that I will, to the utmost of my power, support, maintain and defend the said State against the said King George the Third, and his heirs and successors, and his or their abettors, assistants and adherents, and will serve the said State in the office of ————————, with fidelity and honour, and according to the best of my skill and understanding,

So help me God."

XXXVII. That adequate yearly salaries be allowed to the public officers of this State, and be fixed by law.

XXXVIII. That all persons and religious societies who acknowledge that there is one God, and a future state of rewards and punishments, and that God is publicly to be worshipped, shall be freely tolerated. The Christian Protestant religion shall be deemed, and is hereby constituted and declared to be the established religion of this State. That all denominations of Christian protestants in this State, demeaning themselves peaceably and faithfully, shall enjoy equal religious and civil privileges. To accomplish this desirable purpose without injury to the religious property of those societies of Christians which are by law already incorporated for the purpose of religious worship, and to put it fully into the power of every other society of Christian protestants, either already formed or hereafter to be formed, to obtain the like incorporation, it is hereby constituted, appointed and declared, that the respective societies of the Church of England, that are already formed in this State, for the purpose of religious worship, shall still continue incorporate and hold the religious property now in their possession. And that whenever fifteen or more male persons, not under twenty one years of age, professing the Christian protestant religion, and agreeing to unite themselves in a society for the purposes of religious worship, they shall, (on complying with the terms herein after mentioned) be, and be constituted a Church, and be esteemed and regarded in law as of the established religion of the State, and on a petition to the legislature, shall be entitled to be incorporated and to enjoy equal privileges. That every society of Christians so formed, shall give themselves a name or denomination by which they shall be called and known in law, and all that associate with them for the purposes of worship, shall be esteemed as belonging to the society so called. But that previous to the establishment and incorporation of the respective societies of every denomination as aforesaid, and in order to entitle them thereto, each society so

petitioning shall have agreed to and subscribed in a book the following five articles, without which no agreement or union of men upon pretence of religion, shall entitle them to be incorporated and esteemed as a Church of the established religion of this State.

1st. That there is one Eternal God, and a future state of rewards and punishments.

2d. That God is publicly to be worshipped.

3d. That the Christian Religion is the true religion.

4th. That the Holy Scriptures of the old and new Testaments are of divine inspiration, and are the rule of faith and practice.

5th. That it is lawful and the duty of every man being thereunto called by those that govern, to bear witness to the truth.

And that every inhabitant of this State, when called to make an appeal to God as a witness to truth, shall be permitted to do it in that way which is most agreeable to the dictates of his own conscience. And that the people of this State may forever enjoy the right of electing their own pastors or clergy, and at the same time that the State may have sufficient security for the due discharge of the pastoral office, by those who shall be admitted to be clergymen; no person shall officiate as minister of any established church, who shall not have been chosen by a majority of the society to which he shall minister, or by persons appointed by the said majority, to choose and procure a minister for them; nor until the minister so chosen and appointed shall have made and subscribed to the following declaration, over and above the aforesaid five articles, viz: "That he is determined by God's grace out of the Holy Scriptures, to instruct the people committed to his charge, and to teach nothing as required of necessity to eternal salvation, but that which he shall be persuaded may be concluded and proved from the scripture; that he will use both public and private admonitions, as well to the sick as to the whole within his cure, as need shall require and occasion shall be given, and that he will be diligent in prayers, and in reading of the holy scriptures, and in such studies as help to the knowledge of the same; that he will be diligent to frame and fashion his own self and his family according to the doctrine of Christ, and to make both himself and them, as much as in him lieth, wholesome examples and patterns to the flock of Christ; that he will maintain and set forwards, as much as he can, quietness, peace and love among all people, and especially among those that are or shall be committed to his charge. No person shall disturb or molest any religious assembly; nor shall use any reproachful, reviling or abusive language against any church, that being the certain way of disturbing the peace, and of hindering the conversion of any to the truth, by engaging them in quarrels and animosities, to the hatred of the professors, and that profession which otherwise they might be brought to assent to. No person whatsoever shall speak any thing in their religious assembly irreverently or seditiously of the government of this State. No person shall by law, be obliged to pay towards the maintenance and support of a religious worship, that he does not freely join in, or has not voluntarily engaged to support. But the churches, chapels, parsonages, glebes, and all other property now belonging to any societies of the Church of England, or any other religious societies, shall remain and be secured to them forever. The poor shall be supported, and elections managed in the accustomed manner, until laws shall be provided to adjust those matters in the most equitable way.

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XXXIX. That the whole State shall, as soon as proper laws can be passed for these purposes, be divided into districts and counties, and county courts established.

XL. That the penal laws, as heretofore used, shall be reformed, and punishments made in some cases less sanguinary, and in general more proportionate to the crime.

XLI. That no freeman of this State be taken or imprisoned, or dis[illegible] of his freehold, liberties or privileges, or outlawed, exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land.

XLII. That the military be subordinate to the civil power of the State.

XLIII. That the liberty of the press be inviolably preserved.

XLIV. That no part of this constitution shall be altered without notice being previously given of ninety days, nor shall any part of the same be changed without the consent of a majority of the members of the Senate and House of Representatives.

XLV. That the Senate and House of Representatives shall not proceed to the election of a governor or lieutenant governor, until there be a majority of both houses present.

In the Council Chamber, the 19th day of March, 1778.

ASSENTED TO.

RAWLINS LOWNDES.

HUGH RUTLEDGE,
Speaker of the Legislative Council.

THOMAS BEE,
Speaker of the General Assembly.

ACT ENFORCING AN ASSURANCE OF ALLEGIANCE AND FIDELITY TO THE STATE.

PASSED MARCH 28TH, 1778.*

SOUTH CAROLINA.

At a General Assembly begun and holden at Charlestown on Monday the fifth day of January in the Year of our Lord one thousand seven hundred and seventy-eight, and from thence continued by divers adjournments to Saturday the twenty-eighth day of March one thousand seven hundred and seventy-eight.

AN ACT TO OBLIGE EVERY FREE MALE INHABITANT OF THIS STATE, ABOVE A CERTAIN AGE, TO GIVE ASSURANCE OF FIDELITY AND ALLEGIANCE TO THE SAME, AND FOR OTHER PURPOSES THEREIN MENTIONED.

Whereas, the established and fundamental principle of all societies where mankind unite for common safety and happiness, has rendered the blessing of protection and the duty of allegiance necessarily reciprocal and inseparable, whereby those who will not conform to the latter, forfeit every right or claim to the former:

Be it therefore enacted, by his Excellency Rawlins Lowndes, Esquire, President and Commander-in-Chief, in and over the State of South Carolina, and by the Honourable the Legislative Council and General Assembly of the said State and by the authority of the same, That every free male person within this State above the age of sixteen years, shall take and subscribe the following oath or affirmation before the person or persons and within the time hereinafter appointed and limited, (that is to say,) "I, A. B. do swear (or affirm as the case may be) that I will bear true Faith and Allegiance to the State of South Carolina, and will faithfully support, maintain and defend the same against George the Third, King of Great Britain, his successors, abettors and all other enemies and opposers whatsoever, and will without delay, discover to the Executive Authority or some one Justice of the Peace in this State, all plots and conspiracies that shall come to my knowledge against the said State, or any other of the United States of America. So help me God.

*From the original Manuscript Act.

ACT TO ENFORCE ALLEGIANCE.

And be it further enacted by the authority aforesaid, That the Colonel of the Regiment of Militia, and Captain of the Company of Artillery in Charlestown, within one month; and the Colonels or Commanding Officers of the several other Regiments or Companies of Militia throughout this State, within three months, after the passing of this act, shall cause their respective Regiments or Companies to be assembled at some convenient place, and the said Colonels or Commanding Officers, at the head of their said Regiments respectively, shall take the oath above prescribed, and then administer the same to all the other Commissioned Officers of the said Regiments: And the Captains and other Commissioned Officers of Companies after taking the Oath, shall tender and administer the same to the Non-Commissioned Officers and Privates of their respective Companies, and if any Commissioned Officer, Non-Commissioned Officer, or private, shall refuse to take the said Oath, every such person so refusing shall be immediately disarmed: *Provided always*, That every person so disarmed, shall nevertheless be obliged to attend all musters, but be exempted from fines for appearing thereat without arms, ammunition, or accoutrements.

And be it further enacted by the authority aforesaid, That if any person or persons by reason of sickness or other unavoidable accidents, shall not repair to the place fixed upon by his or their Colonel or Commanding Officer, for the assembling of the Regiment or Company at the time appointed, and take the said Oath, that then every such person or persons shall within one month thereafter, go before the Captain of the Company to which he or they belong, and take the Oath aforesaid; which being done the said Captain shall certify the same in manner as is hereinafter directed, and in default thereof such person or persons shall be disarmed by the orders of the Captain aforesaid.

And be it further enacted by the authority aforesaid, That from and immediately after the passing of this act, the members of the present Legislative Council and General Assembly in their respective houses, and all persons holding any office or place of trust, or emolument in this State, also all Ferrymen, Pilots, and all other persons not subject to Militia duty except in times of alarm, shall within one month thereafter, before any one Justice of the Peace, take and subscribe the Oath abovementioned; nor shall any person or persons hereafter be capable of being chosen or appointed to any office, place of trust or emolument in this State, or be qualified to vote at any public election whatever, or to serve as a Juror in any Court within this State, or be at liberty to commence any action or suit either in law or equity, or to hold or possess any Lands, Tenements or Heriditaments in this State by gift, devise or purchase, unless such person or persons, previous to his or their appointment to such office, place of trust or emolument, voting at such election, serving on any Jury, commencing any action or suit, or purchasing or possessing any Lands, Tenements or Heriditaments, shall have taken the Oath above prescribed before some Justice of the Peace or other person herein before appointed to administer the same, any Law, Usage or Custom to the contrary thereof, in any wise notwithstanding.

And be it further enacted by the authority aforesaid, That all and every person and persons coming hereafter into this State either by Land or Water, shall, and he and they, is, and are directed and required immediately to go to the nearest Justice of the Peace in the Parish or District into which he or they shall so arrive or come, and take the Oath before prescribed, whereupon he or they shall obtain a certificate or certificates thereof from the said Justice, and if any person or persons shall neglect

ACT TO ENFORCE ALLEGIANCE.

to comply with the direction of this act, any one Justice of the Peace within his proper Parish or district, shall, and he is hereby authorized, enjoined and required, immediately to cause such person or persons to be apprehended and brought before him and to tender him or them the Oath abovementioned, and on refusal to take it, he or they shall be committed by the said Justice to the nearest Gaol, where such person or persons is or are there to remain without bail or mainprize, until he or they shall give bond with good security in the sum of Ten Thousand Pounds currency, immediately to depart the State never to return unless permitted by the Legislative authority of this State, which bond shall be made payable to the President and Commander-in-Chief for the time being for the use of the State. *Provided always*, that if bond and security be not given within thirty days after commitment as aforesaid, that then the President or Commander-in-Chief shall cause such person or persons to be sent off in the first vessel or vessels that shall thereafter sail for Europe. *And further provided*, that nothing herein contained shall extend or be construed to extend to any prisoners of war, officers in the army or navy of the United States, or of this State, master or mariners actually belonging to any ship or other vessel trading to this State, and not citizens of the same, or merchants trading here from ports under the dominion of foreign powers in amity with the United States.

And be it further enacted by the authority aforesaid, That all persons authorized by this act to tender and administer the Oath herein contained, shall immediately after administering such Oath, give to the person or persons who shall take the same, the following Certificate, (that is to say) "I do hereby certify that ——— hath taken and subscribed the Oath (or affirmation as the case may be) of allegiance and fidelity, as directed by an Act of the General Assembly of the State of South Carolina, entitled An Act to oblige every free male person of this State above a certain age to give assurance of Fidelity and Allegiance to the same and for other purposes."

And be it further enacted by the authority aforesaid, That every person who is authorized by this act to administer the Oath above prescribed shall keep a fair Register of the names of all and every person and persons to whom the said Oath shall be administered, and also of such as shall refuse to take the same, and transmit authentick copies of such registers under their hands and seals respectively, on every fourth of July yearly, to the Sheriff of the district wherein such person or persons reside who have taken or refused to take the said Oath.

And be it further enacted by the authority aforesaid, That all and every person and persons neglecting or refusing to take the Oath within the time prescribed by this act and remaining in the State for more than sixty days thereafter, shall be thenceforth incapable of exercising any profession, trade, art or mystery in this State, or buying or selling or acquiring, or conveying any property whatever, and all property so brought or sold, acquired or conveyed, shall be forfeited and disposed of, one half to the informer and the other half to this State; and the person or persons so buying, acquiring, conveying, or selling as aforesaid, shall likewise forfeit the sum of one hundred pounds current money to the State for every act and thing that he or they shall do, which he or they is or are hereby disqualified from doing.

And be it further enacted by the authority aforesaid, That if any person or persons required by this act to take the Oath hereby prescribed, shall refuse or neglect to take the same and shall depart this State within sixty days thereafter, all and every such person and persons may appoint

ACT TO ENFORCE ALLEGIANCE.

an attorney or attornies to be approved of by the Commander-in-Chief for the time being, which attorney or attornies shall sell or dispose of all and singular the estate, real and personal, of such person and persons by whom he or they shall be so appointed, and all such sum and sums of money as shall arise from the said sale, as well as all and every other sum and sums of money which shall be due and owing to the said person or persons, shall, after satisfying all just and equitable claims and demands which shall be brought against such person or persons, be remitted by the said attorney or attornies to his or their principal within twelve months after the person or persons who shall so refuse or neglect to take the said Oath shall have withdrawn him or themselves from this State; and if the said person or persons so refusing or neglecting, and withdrawing, shall not appoint an attorney or attornies, in such case the Commander-in-Chief for the time being, shall with the advice of the Privy Council, appoint proper persons to take charge of the estate of the said person or persons so leaving this State, and the persons so to be appointed, shall within three months from the day of their appointment, sell and dispose of such estate as shall be committed to them by virtue of this act, and pay the money which shall arise from the said sale, into the public Treasury of this State. And in case the attorney or attorneys to be appointed by the person or persons leaving this State, shall not remit to him or them the money to arise from the said sales as well as all other money that shall be due or owing to the said person or persons within twelve months after such person or persons shall have withdrawn from this State, then the said attorney or attornies shall within one month after the expiration of the time limited for remitting the said money, pay the same into the public Treasury of this State.

And be it further enacted by the authority aforesaid, That the attorney or attornies of all such persons as have been sent off from this State in consequence of their having refused to take the Oath prescribed by an Ordinance, entitled "an Ordinance for establishing an oath of abjuration and allegiance," passed the thirteenth day of February one thousand seven hunred and seventy-seven, shall, within eighteen months after the passing of this act, sell and dispose of all and singular the estate real and personal of such person or persons to whom they were appointed attorney or attornies, and to remit to him or them within twelve months thereafter, all such sum or sums of money as shall arise from the sales thereof, after satisfying all just and equitable claims or demands which shall be brought against such person or persons, and all other sums of money which shall be due or owing to such person or persons: and if the said attorney or attornies shall neglect or refuse so to do, then and in that case the Commander-in-Chief for the time being with the advice of the Privy Council, shall appoint some person or persons in the place of the attorney or attornies so neglecting or refusing to sell or remit, which person or persons so to be appointed, shall within three months after his or their appointment sell and dispose of the estate or estates so to be committed to his or their charge, and pay the money to arise from such sale or sales into the public Treasury of this State.

And be it further enacted by the authority aforesaid, That if any person refusing or neglecting to take the Oath prescribed by this Act and withdrawing from this State, shall return to the same, then he shall be adjudged guilty of Treason against this State, and shall, upon conviction thereof, suffer death as a Traitor.

And be it further enacted by the authority aforesaid, That the first clause in an ordinance entitled "An Ordinance for establishing an oath of

abjuration and allegiance, passed the thirteenth day of February one thousand seven hundred and seventy-seven, be and the same is hereby repealed and made void to all intents and purposes whatsoever.

ACT TO ENFORCE ALLEGIANCE.

In the Council Chamber, the twenty-eighth day of March, 1778.

ASSENTED TO:

RAWLINS LOWNDES.

HUGH RUTLEDGE,
Speaker of the Legislative Council.

THOMAS BEE,
Speaker of the General Assembly.

ARTICLES OF CONFEDERATION.

IN CONGRESS, JULY 8th, 1778.

Articles of Confederation and perpetual Union, between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Article I. The style of this Confederacy shall be, "*the United States of America.*"

II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in Congress assembled.

III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

IV. Sect. 1st. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States of this Union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all priviledges and immunities of free citizens in the several states; and the people of each state shall have free ingress and egress to and from any other state, and shall enjoy therein all the priviledges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively; provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant; *provided also*, that no imposition, duties, or restriction, shall be laid by any state, on the property of the United States, or either of them.

IV. 2. If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from justice, and be found in any of the United States, he shall, upon the demand of the Governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

IV. 3. Full faith and credit shall be given in each of these states, to the records, acts, and judicial proceedings of the courts, and magistrates of every other state.

V. 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such

manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

V. 2. No State shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any salary, fees, or emolument, of any kind.

V. 3. Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of these states.

V. 4. In determining questions in the United States in Congress assembled, each state shall have one vote.

V. 5. Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

VI. 1. No state, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state, nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

VI. 2. No two or more states shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

VI. 3. No state shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

VI. 4. No vessel of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in Congress assembled, for the defence of such state, or its trade: nor shall any body of forces be kept up by any state in time of peace, except such number only as, in the judgement of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

VI. 5. No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the

ARTICLES OF CONFEDERATION.

danger is so imminent as not to admit of delay till the United States in Congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque, or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which, war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

VII. When land forces are raised by any state for the common defence, all officers of, or under the rank of Colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion, shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in Congress assembled.

IX. 1. The United States in Congress assembled, shall have the whole and exclusive right and power of determining on peace or war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or for prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated,; of granting letters of marque and reprisal in time of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally, appeals in all cases of captures; Provided that no member of congress shall be appointed a judge of any of the said courts.

IX. 2. The United States in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more states, concerning boundary, jurisdiction, or any other cause whatsoever; which authority shall always be exercised in the manner following; Whenever the legislative or executive authority, or lawful agent of any state in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint

consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons, each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as Congress shall direct, shall in the presence of Congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause, shall agree in the determination: and if either party shall neglect to attend at the day appointed, without shewing reasons which Congress shall judge sufficient, or being present shall refuse to strike, then Congress shall proceed to nominate three persons out of each state, and the Secretary of Congress shall strike in behalf of such party absent, or refusing; and the judgement and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgement, which shall in like manner be final and decisive; the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress, for the security of the parties concerned; provided that every commissioner, before he sits in judgement, shall take an oath, to be administered by one of the judges of the supreme, or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgement, without favour, affection, or hope of reward; Provided also that no state shall be deprived of territory for the benefit of the United States.

IX. 3. All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdiction, as they may respect those lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party, to the Congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

IX. 4. The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade, and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State within its own limits, be not infringed or violated; establishing and regulating Post Offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

ARTICLES OF CONFEDERATION.

IX. 5. The United States in Congress assembled, shall have authority to appoint a committee to sit in the recess of Congress, to be denominated, "A Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding; and thereupon the legislature of each State shall appoint the regimental officers, raise the men, clothe, arm and equip them in soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, clothe, arm, officer and equip, as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

IX. 6. The United States in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a Commander-in-Chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

IX. 7. The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State, on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a State or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

X. The committee of the States or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled, is requisite.

XI. Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

XII. All bills of credit emitted, monies borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

XIII. Every State shall abide by the determination of the United States in Congress assembled, in all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every State.

And whereas, it hath pleased the Great Governor of the World, to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorise us to ratify the said articles of confederation and of perpetual union—Know ye, that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective contituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, in all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent, and that the union shall be perpetual. In witness whereof, we have hereunto set our hands in Congress.

Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the Year of our Lord, 1778, *and in the 3d Year of the Independence of America.*

New-Hampshire.
Josiah Bartlett,
John Wentworth, jr.

Massachusetts Bay.
John Hancock,
Samuel Adams,
Elbridge Gerry,
Francis Dana,
James Lovel,
Samuel Holten.

Pennsylvania.
Robert Morris,
Daniel Roberdeau,
Jonathan Bayard Smith.
William Clingan,
Joseph Reed,

Delaware.
Thomas McKean,
John Dickinson,
Nicholas Vandyke.

ARTICLES OF CONFEDERATION.

Rhode-Island, &c.
Will am Ellery,
Henry Marchant,
John Collins.

Connecticut.
Roger Sherman,
Samuel Huntington,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams.

New-York.
James Duane,
Francis Lewis,
William Duer,
Gouv. Morris.

New-Je ey.
John Witherspoon,
Nathaniel Scudder.

Maryland.
John Hanson,
Daniel Carroll.

Virginia.
Richard Henry Lee,
John Ba ister,
Thomas Adams,
John H rvie,
Francis Lightfoot Lee.

North-Carolina.
John Penn,
C ns. Harnett,
John Williams.

South-Carolina.
Henry L urens,
William Henry Drayton,
John Mathews,
Richard Hutson,
Thomas Heyward, jr.

Georgia.
John Walton,
Edward Telfair,
Edward Langworthy.

ACTS OF CESSION OF VIRGINIA

OF HER TITLE TO LAND NORTH AND WEST OF THE RIVER OHIO.

MARCH 1, 1784. *

(See Laws and Resolutions of the U. States, relating to the public Lands, p. 98.)

VIRGINIA.

Whereas the General Assembly of Virginia, at their session commencing on the 20th day of October, 1783, passed an act to authorize their delegates in Congress to convey to the United States, in Congress assembled, all the right of that commonwealth to the territory North-Westward of the river Ohio; and whereas the delegates of the said commonwealth have presented to Congress the form of a deed proposed to be executed pursuant to the said act, in the words following:

To all who shall see these presents, we, Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, the underwritten delegates for

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* The acts of the Confederation of July, 1778, not repealed by the Constitution of the United States of 1787, are themselves of a constitutional character and validity, and as fully binding upon Congress as any part of the present Constitution of the United States. The Convention of 1787 was not intended to be subversive, but emendatory of the Confederation. All such acts therefore, under which the States, or any of them can claim any rights, are part and parcel of the Laws of each State, and are proper to be inserted in such a collection of Laws. The Acts of Cession passed by the State of Virginia of her claim to territory North and West of the River Ohio, and the Ordinance of the Confederation for the laying out and governing such new States as may be formed out of that territory, contain general provisions in which the several States of the old Confederation are or may be interested. For instance, the lands comprised within the North-Western territory, are declared to be a fund, in which the States are interested in proportion to their respective taxation. At this moment while I am writing, Mr. CLAY'S bill for the disposal of the surplus revenue, arising from the sale of the public lands, is in agitation before Congress, and must constitutionally be decided on a purview of the provisions contained in the Act of Cession of Virginia, and the Ordinance of 1787. And upon these provisions will the distributory share of South Carolina depend, viz: upon taxable contribution, regulated by federal representation.

These reasons have induced the Editor to insert the documents in question, which appear at first sight to have little relation to our own State, but which may become very important to her interests. Edit.

ACT OF CESSION OF VIRGINIA.

the commonwealth of Virginia, in the Congress of the United States of America, send greeting:

Whereas the General Assembly of the Commonwealth of Virginia, at their sessions begun on the 20th day of October, 1783, passed an act entitled "An act to authorize the delegates of this State, in Congress, to convey to the United States in Congress assembled, all the right of this commonwealth to the territory Northwestward of the river Ohio," in these words following, to wit:

[Here follows the preamble of the act.]

Be it enacted by the General Assembly, That it shall and may be lawful for the Delegates of this State to the Congress of the United States, o such of them as shall be assembled in Congress, and the said delegates or such of them so assembled, are hereby fully authorized and empowered for and on behalf of this State, by proper deeds or instruments in writing, under their hands and seals, to convey, transfer, assign and make over to to the United States, in Congress assembled, for the benefit of the said States, all right, title and claim, as well of soil as jurisdiction, which this Commonwealth hath to the territory or tract of country within the limits of the Virginia Charter, situate, lying and being, to the Northwest of the river Ohio, subject to the terms and conditions contained in the above recited act of Congress of the 13th day of September last; that is to say, upon condition that the territory so ceded shall be laid out and formed into States, containing a suitable extent of territory, not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the States so formed shall be distinct republican States, and admitted members of the Federal Union, having the same rights of sovereignty, freedom and independence as the other States.

That the necessary and reasonable expenses incurred by this State in subduing any British posts, or in maintaing forts and garrison within, and for the defence, or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States; and that one commissioner shall be appointed by Congress, one by this commonwealth, and another by those two commissioners, who, or a majority of them, shall be authorised and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this State, which they shall judge to be comprised within the intent and meaning of the act of Congress of the tenth of October, one thousand seven hundred and eighty, respecting such expenses. That the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighbouring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not exceeding one hundred and fifty thousand acres of land, promised by this State, shall be allowed and granted to the then Colonel, now General George Rogers Clarke, and to the officers and soldiers of his regiment, who marched with him when the post of Kaskaskias and St. Vincents were reduced, and to the officers and soldiers that have been since incorporoted into the said regiment, to be laid off in one tract, the length of which not to exceed double the breadth, in such place, on the Northwest side of the Ohio, as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion according to the laws of

Act of Cession of Virginia.

Virginia. That in case the quantity of good land on the South-East side of the Ohio, upon the waters of the Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon Continental establishment, should, from the North Carolina line, bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops, in good lands, to be laid off between the rivers Sciota and Little Miami, on the North-west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American Army, shall be considered a common fund for the use and benefit of such of the United States as have become, or shall become, members of the confederation or federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever: *Provided*, that the trust hereby reposed in the Delegates of this State, shall not be executed, unless three of them, at least, are present in Congress.

Deficiency of military bounties in land, promised by Virginia, to be made up between Sciota & Little Miami.

Lands ceded to be a common fund for the United States.

And *whereas* the said General Assembly, by their resolutions of June sixth, one thousand seven hundred and eighty three, had constituted and appointed us, the said Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, delegates to represent the said Commonwealth in Congress for one year, from the first Monday in November then next following, which resolution remains in full force; now, therefore, know ye, that we, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, by virtue of the power and authority committed to us by the act of the said General Assembly of Virginia before recited, and in the name and for and on behalf of the said Commonwealth, do by these presents convey, transfer, assign and make over, unto the United States in Congress assembled, for the benefit of the said States, Virginia inclusive, all right, title, and claim, as well of soil as of jurisdiction, which the said commonwealth hath to the territory or tract of Country within the limits of the Virginia Charter, situate, lying, and being to the North-westward of the river Ohio, to and for the uses and purposes, and on the conditions of the said recited act. In testimony whereof we have hereunto subscribed our names and affixed our seals, in Congress, the —— day of ———, in the year of our Lord one thousand seven hundred and eighty-four, and of the Independence of the United States, the eighth.

Delegates convey the territory.

Resolved, That the United States, in Congress assembled, are ready to receive this deed, whenever the delegates of the State of Virginia are ready to execute the same.

Congress ready to receive the deed.

The delegates of Virginia then proceeded, and signed, sealed and delivered the said deed; whereupon Congress came to the following resolution:

The Delegates of the Commonwealth of Virginia having executed the deed,

Deed executed.

Resolved, That the same be recorded and enrolled among the acts of the United States in Congress assembled.

To be recorded.

RESOLUTION OF CONGRESS,

ACCEPTING THE CESSION OF VIRGINIA OF LANDS NORTH AND WEST OF OHIO; JULY 7, 1786.

(See Laws and Resolutions of the U. States, relating to the public lands, p. 100.)

Alteration of the act of cession asked from Virginia.

Resolved, That it be, and it hereby is, recommended to the Legislature of Virginia, to take into consideration their act of cession, and revise the same so far as to empower the United States in Congress assembled, to make such a division of the territory of the United States lying Northerly and Westerly of the river Ohio, into distinct republican States, not more than five, nor less than three, as the situation of that country and future circumstances may require; which States shall hereafter become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence, as the original States, in conformity with the resolution of Congress of the 10th of October, 1780.

ORDINANCE OF CONGRESS,

FOR THE GOVERNMENT OF THE TERRITORY NORTH AND WEST OF OHIO,

JULY 13, 1787.

(See Laws and Resolutions of the U. States, relating to the public lands, p. 356.)

Be it ordained by the United States, in Congress assembled, That the said territory, for the purposes of temporary government be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children, and the descendants of a deceased child, in equal parts; the descendants of a

deceased child or grand child to take the share of their deceased parent in equal parts among them. And where there shall be no children or descendants, then in equal parts, to the next of kin in equal degree; and, among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parents' share: and there shall, in no case, be a distinction between kindred of the whole and half blood; saving, in all cases, to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law, relative to descents and dower, shall remain in full force until altered by the legislature of the district. And, until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1000 acres of land while in the exercise of his office.

There shall be appointed, from time to time, by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his Executive department; and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time; which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved by Congress; but, afterwards, the legislature shall have authority to alter them as they shall think fit.

The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY.

Previous to the organization of the General Assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers, shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be 5000 free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the General Assembly: *Provided*, That, for every 500 free male inhabitants, there shall be one representative, and so on progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to 25; after which, the number and proportion of representatives shall be regulated by the legislature, *Provided*, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case shall likewise hold in his own right, in fee simple, 200 acres of land within the same: *Provided, also*, That a freehold in 50 acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The General Assembly, or Legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in 500 acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and re-

turn their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act, whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue and dissolve the General Assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not of voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent governments therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ART. 1st. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2d. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

ART. 3d. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always

ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY.

be observed towards the Indians: their lands and property shall never be taken from them without their consent; and, in their property, rights and liberty they shall never be invaded or disturbed, unless in just and lawful wars, authorized by Congress; but laws founded in justice and humanity, shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4th. The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory, shall be subject to pay a part of the Federal debts, contracted or to be contracted, and a proportional part of the expenses of Government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes, for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers.* No tax shall be imposed on lands the property of the United States: and, in no case, shall non resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the Confederacy without any tax, impost, or duty therefor.

ART. 5. There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit; The Western State in the said territory, shall be bounded by the Mississippi, the Ohio and Wabash rivers; a direct line drawn from the Wabash and Post St. Vincents, due North, to the territorial line between the United States and Canada; and, by the said territorial line, to the lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio; by the Ohio, by a direct line, drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The Eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line; *Provided, however*, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies North

* Act of 20th February, 1811, provides the same in Louisiana; and, also, that lands sold by Congress shall not be taxed for five years after sale—Post. No. 160—in Mississippi, by act of 1st March, 1817, Post. No. 296, and so of all others.—*Laws and Resol. relating to the public Lands.*

of an East and West line drawn through the Southernly bend or extreme of lake Michigan. And, whenever any of the said States shall have 60,000 free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States on an equal footing with the original States, in all respects whatever, and shall be at liberty to form a permanent constitution and State Government: *Provided*, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than 60,000.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishments of crimes whereof the party shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void. Done, &c.

ACT OF VIRGINIA, 30 DECEMBER, 1788.

SUPPLEMENTARY TO THE ACT OF CESSION.

(See Laws and Resolutions of the U. States, relating to Public Lands, p. 101.*)*

Whereas the United States, in Congress assembled, did, on the seventh day of July, in the year of our Lord one thousand seven hundred and eighty-six, state certain reasons, shewing that a division of the territory which hath been ceded to the said United States by this Commonwealth, into States, in conformity to the terms of cession, should the same be adhered to, would be attended with many inconveniences, and did recommend a revision of the act of cession, so far as to empower Congress to make such a division of the said territory into distinct and republican States, not more than five nor less than three in number, as the situation of that country and future circumstances might require. And the said United States, in Congress assembled, have, in an ordinance for the government of the territory Northwest of the river Ohio, passed on the 13th of July, one thousand seven hundred and eighty-seven, declared the following as one of the articles of compact between the original States, and the People and States in the said territory, viz:

ACT OF VIRGINIA 30 DEC. 1788.

[Here the fifth article of compact, of the ordinance of Congress, of 13th July, 1787, as above inserted, is recited verbatim.]

And it is expedient that this commonwealth do assent to the proposed alteration, so as to ratify and confirm the said article of compact between the original States and the people and States in the said territory:

2. *Be it therefore enacted by the General Assembly*, That the afore-recited article of compact, between the original States and the People and States in the tertitory Northwest of Ohio river, be, and the same is hereby ratified and confirmed, any thing to the contrary in the deed of cession of the said territory by this commonwealth to the United States notwithstanding.

ACT OF CESSION OF *SOUTH CAROLINA*,

8th MARCH, 1787, AND 9th AUGUST, 1787.

(See Laws and Resolutions of the U. States, relating to the public Lands, p. 107.)

RESOLUTIONS OF CONGRESS, AUGUST 9, 1787.

Resolved, That Congress are ready to accept the cession of the claim of the State of South Carolina, to the tract of country described in the act of said State, whenever the delegates will execute a deed conformable to said act.

In virtue of the powers in them vested, the delegates of the State of South Carolina, for and in behalf of the said State, executed the following deed of cession to the United States of America:

To all who shall see these presents: We, John Kean and Daniel Huger, the underwritten delegates for the State of South Carolina, in the Congress of the United States, send greeting:

Whereas the General Assembly of the State of South-Carolina, on the eighth of March, in the year of our Lord one thousand seven hundred and eighty seven, passed an act in the following words, viz:

ACT OF CESSION OF S. CAROLINA.

"*AN ACT to authorize the delegates of this State, in Congress, to convey to the United States, in Congress assembled, all the right of this State to the territory herein described.* 9 *August*, 1787.

Whereas, the Congress of the United States did, on the sixth day of September in the year one thousand seven hundred and eighty, recommend to the several States in the Union, having claims to Western territory, to make a liberal cession to the United States of a portion of their respective claims, for the common benefit of the Union; And whereas this State is willing to adopt every measure which can tend to promote the honor and dignity of the United States, and strengthen the Federal Union:

Be it therefore enacted by the Honourable the Senate and House of Representatives in General Assembly met and sitting, and by the authority of the same, That it shall and may be lawful for the delegates of this State to the Congress of the United States, or such of them as shall be assembled in Congress, and they are hereby fully authorized and empowered, for and on behalf of this State, by proper deeds, or instruments in writing, under their hands and seals, to convey, transfer, assign, and make over, unto the United States, in Congress assembled, for the benefit of the said States, all right, title and claim, as well of soil as jurisdiction, which this State hath to the territory or tract of country within the limits of the charter of South Carolina, situate, lying and being within the boundaries and lines hereinafter described, that is to say: All the territory or tract of country included within the river Mississippi, and a line beginning at that part of the said river which is intersected by the Southern boundary line of the State of North Carolina, and continuing along the said boundary line, until it intersects the ridge or chain of mountains which divides the Eastern from the Western waters, then to be continued along the top of the said ridge of mountains, until it intersects a line to be drawn due West fram the head of the Southern branch of Tugoloo river to the said mountains, and thence to run a due West course to the river Mississippi.

The Delegates authorized to convey to the United States.

Now, therefore, know ye, that we, the said John Kean and Daniel Huger, by virtue of the power and authority to us committed, by the said act of the General Assembly of South Carolina, before recited, in the name, and for and in behalf of the State of South Carolina, do, by these presents, assign, transfer, quit-claim, cede, and convey, to the United States of America, for their benefit, South Carolina inclusive, all the right, title, interest, jurisdiction, and claim, which the State of South Carolina hath, in and to the before mentioned and described territory or tract of country, as the same is bounded and described in the said act of Assembly, for the uses in the said recited act of Assembly declared.

Territory ceded

In witness whereof, we have hereunto set our hands and seals this ninth day of August, in the year of our Lord one thousand seven hundred and eighty seven, and of the sovereignty and independence of America, the twelfth, &c.

REMARKS BY THE EDITOR.—Acts of Cession of land to and for the use of the United States, were made by the State of New York, March 1, 1781. By the State of Virginia, March 1, 1784, and 30 Dec. 1788. By the State of Massachusetts, 17th April, 1785. By the State of Connecti-

EDITOR'S REMARKS.

cut, 13th September, 1786. By the State of North Carolina, 25 Feb'y, 1790. By the State of Tennessee, April 15, 1806. By the State of Georgia, 24th April, 1802.—*See Laws and Resolutions relating to the public Lands, from page* 93 *to page* 122. *Washington*, 1828; *Gales & Seaton.*

I have introduced the acts of Cession of Virginia, and the Ordinance for the Government of the Territory of the United States North and West of the river Ohio, as sufficient to shew the character of these acts of Cession, without burthening the volume with unnecessary matter.

The act of Cession of New York, 1st March, 1781, states as a condition, that the lands ceded "shall be and inure for the benefit of such of the U. "States as shall become members of the federal alliance of the said "States, and for no other use or purpose whatsoever."

The Cession of Virginia, Oct. 20, 1783, of lands North and West of the river Ohio, states that these lands "shall be considered a common fund "for the use and benefit of such of the United States as have become or "shall become members of the confederation or federal alliance of the "said States, Virginia inclusive; according to their usual and respective "proportions in the general charge and expenditure."

The State of North Carolina, 25 Feb. 1790, declares that the land ceded by that State "shall be considered as a common fund for the use "and benefit of the United States of America, North Carolina inclusive, "according to their respective and usual proportion in the general charge "and expenditure."

By various acts of Congress, the monies arising from the sale of public lands, are made part of the fund for payment of the public debt.

The public debt being paid, those surplus proceeds enure for the benefit of the several States, according to their respective and usual proportion of the general charge and expenditure. Hence the interest arising to each State therein, and the claim of each State thereon founded.

The Cession of Virginia, and the Ordinance for the Government of the Territory North West of the river Ohio, give me an opportunity of remarking, that the 6th article of that Ordinance, forbidding the introduction of involuntary servitude, is not only not authorized by, but is in direct contravention of the conditions of cession of the Virginia act of Dec. 30, 1788, and the resolution of Congress of July 7, 1786, giving to the States hereafter to be located on that territory, the *same rights of Sovereignty, Freedom and Independence as the original States.* Including, of course, the right of regulating their internal and domestic discipline in their own way, without the interference of Congress: otherwise how can they enjoy the rights then belonging to the original States?—EDITOR.

CONSTITUTION OF THE UNITED STATES, WITH THE AMENDMENTS.

17TH SEPTEMBER, 1787.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE 1.—SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence Plantations one; Connecticut five; New-York six; New-Jersey four; Pennsylvania eight; Delaware one; Maryland six; Virginia ten; North Carolina five; South Carolina five; and Georgia three.

CONSTITUTION OF THE U. STATES.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill up such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereo., for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at th expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to

day, and may be authorised to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objection at large on their journal, and proceed to re-consider it. If, after such re-consideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be re-considered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress by their adjournment prevent its return; in which case it shall not be a law.

3. Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being

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disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to the r respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—and,

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or ex post facto law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the neat produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.—SECTION 1.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of sena-

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tors and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president: neither shall any person be eligible to that office, who shall not not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president; and the congress may, by law, provide for the case of removal, death, resignation or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION 2.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur: and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

1. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

1. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.—SECTION 1.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties

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made, or which shall be made, under their authority: to all cases affecting abassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed: but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.—SECTION 1.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings, shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION 3.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any

other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4.

1. The United States shall guaranty to every state in this union, a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

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Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the Year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President and deputy from Virginia.

New-Hampshire.
John Langdon,
Nicholas Gilman.

Massachusetts.
Nathaniel Gorham,
Rufus King.

Connecticut.
William Samuel Johnson,
Roger Sherman.

New-York.
Alexander Hamilton.

New-Jersey.
William Livingston,
David Br arly,
William Paterson,
Jonathan Dayton.

Pennsylvania.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Governeur Morris.

Delaware.
George Read,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland.
James M'Henry,
Daniel of St. Thomas Jenifer,
Daniel Carroll.

Virginia.
John Blair,
James Madison, jun.

North-Carolina.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

South-Carolina.
John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia.
William Few,
Abraham Baldwin.

Attest,

WILLIAM JACKSON,
Secretary.

AMENDMENTS TO THE CONSTITUTION.

Article 1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Art. 2. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Art. 3. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Art. 4. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Art. 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Art. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have assistance of counsel for his defence.

Art. 7. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Art. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Art. 9. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Art. 10. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Art. 11. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Art. 12. § 1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom,

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at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed: and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

RESOLUTION OF THE TWO HOUSES OF THE LEGISLATURE OF SOUTH CAROLINA,

RESPECTING THE AMENDMENTS TO THE CONSTITUTION OF THE U. STATES.

DECEMBER 18, 1829.*

(Pamphlet Laws, Reports and Resolutions of 1829, *p.* 27.*)*

In the Senate, December 18, 1829.

Resolved, That the Clerks of the two houses and the Secretary of State, do examine their respective offices, and report to the Legislature at its next session, whether this State has ever acted upon, and accepted or rejected the amendment to the Constitution of the United States, set down as the 13th, in the authorized edition of the laws of the United States, at page 74 of the first volume, (published pursuant to the act of Congress of the 18th. April, 1814.)

Resolved, That the said officers do likewise examine and report, whether this State has ever acted upon and accepted those two amendments of the Constitution of the United States, contained in the above mentioned edition of the laws of the United States, at page 72 of the first volume, and numbered 1 and 2.

Ordered, That the resolution be sent to the House of Representatives.

By order of the Senate, JOB JOHNSTON, C. S.

In the House of Representatives, December 18, 1829.

Resolved, That the House do concur with the Senate. *Ordered*, That it be returned.

By order of the House, R. ANDERSON, C. H. R.

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* The Editor can find no report made in conformity thereto.

THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA.

JUNE 3d, 1790.

We, the Delegates of the people of the State of South-Carolina in General Convention met, do ordain and establish this Constitution for its government.

ARTICLE I.

Legislature.

Sec. 1. The legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives.

Representatives how chosen and for what time.

Sec. 2. The House of Representatives shall be composed of members chosen by ballot, every second year, by the citizens of this State, qualified as in this Constitution is provided.

Sec. 3. The several election districts in this State shall elect the following number for representatives, viz :

Proportion of them.

Charleston, including St. Philip and St. Michael,	Fifteen Members.
Christ Church,	Three "
St. John, Berkley,	Three "
St. Andrew,	Three "
St. George, Dorchester,	Three "
St. James, Goose Creek,	Three "
St. Thomas and St. Dennis,	Three "
St. Paul,	Three "
St. Bartholomew,	Three "
St. James, Santee,	Three "
St. John, Colleton,	Three "
St. Stephen,	Three "
St. Helena,	Three "
St. Luke,	Three "
Prince William,	Three "
St. Peter,	Three "
All Saints, (including its ancient boundaries)	One "
Winyaw, (not including any part of All Saints)	Three "
Kingston, (not including any part of All Saints)	Two "
Williamsburgh,	Two "
Liberty,	Two "
Marlborough,	Two "
Chesterfield,	Two "
Darlington,	Two "
York,	Three "

Chester,	Two	Members.
Fairfield,	Two	"
Richland,	Two	"
Lancaster,	Two	"
Kershaw,	Two	"
Claremont,	Two	"
Clarendon,	Two	"
Abbeville,	Three	"
Edgefield,	Three	"
Newberry, (including the fork between Broad and Saluda Rivers,)	Three	"
Laurens,	Three	"
Union,	Two	"
Spartan,	Two	"
Greenville,	Two	"
Pendleton,	Three	"
St. Matthew,	Two	"
Orange,	Two	"
Winton, (including the district between Savannah river and the north fork of Edisto)	Three	"
Saxe Gotha,	Three	"

Sec. 4. Every free white man, of the age of twenty-one years, being a citizen of this State, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land, or a town lot, of which he hath been legally seized and possessed at least six months before such election, or, not having such freehold or town lot, hath been a resident in the election district, in which he offers to give his vote, six months before the said election, and hath paid a tax the preceding year of three shillings sterling towards the support of this government, shall have a right to vote for a member or members, to serve in either branch of the legislature, for the election district in which he holds such property or is so resident. Qualification.

Sec. 5. The returning officer, or any other person present, entitled to vote, may require any person who shall offer his vote at an election, to produce a certificate of his citizenship, and a receipt from the tax collector of his having paid a tax, entitling him to vote, or to swear or affirm, that he is duly qualified to vote agreeably to this constitution. How proved or examined.

Sec. 6. No person shall be eligible to a seat in the House of Representatives, unless he is a free white man of the age of twenty-one years, and hath been a citizen and resident in this State three years previous to his election. If a resident in the election district, he shall not be eligible to a seat in the House of Representatives, unless he be legally seized and possessed, in his own right, of a settled freehold estate of five hundred acres of land, and ten negroes; or of a real estate of the value of one hundred and fifty pounds sterling, clear of debt. If a non-resident, he shall be legally seized and possessed of a settled freehold estate therein, of the value of five hundred pounds sterling, clear of debt. Who may or may not be elected.

Sec. 7. The Senate shall be composed of members to be chosen for four years, in the following proportions, by the citizens of this State, qualified to elect members to the House of Representatives, at the same time, in the same manner, and at the same places where they shall vote for representatives, viz: Senators chos'n for four years.

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Proportion of them.

Charleston (including St. Philip and St. Michael,)	Two	Members.
Christ Church,	One	"
St. John, Berkley,	One	"
St. Andrew,	One	"
St. George,	One	"
St. James, Goose Creek,	One	"
St. Thomas & St. Dennis,	One	"
St. Paul,	One	"
St. Bartholomew,	One	"
St. James, Santee,	One	"
St. John, Colleton,	One	"
St. Stephen,	One	"
St. Helena,	One	"
St. Luke,	One	"
Prince William,	One	"
St. Peter,	One	"
All Saints,	One	"
Winyaw & Williamsburgh,	One	"
Liberty and Kingston,	One	"
Marlborough, Chesterfield and Darlington,	Two	"
York,	One	"
Fairfield, Richland and Chester,	One	"
Lancaster and Kershaw,	One	"
Claremont and Clarendon,	One	"
Abbeville,	One	"
Edgefield,	One	"
Newberry (including the fork between Broad and Saluda rivers,)	One	"
Laurens,	One	"
Union,	One	"
Spartan,	One	"
Greenville,	One	"
Pendleton,	One	"
St. Mathew and Orange,	One	"
Winton, including the district between Savannah river and the North fork of Edisto,	One	"
Saxe Gotha,	One	"

Who shall not be eligible to the Senate.

Sec. 8. No person shall be eligible to a seat in the Senate unless he is a free white man, of the age of thirty years, and hath been a citizen and resident in this State five years previous to his election, If a resident in the election district, he shall not be eligible, unless he be legally seized and possessed in his own right of a settled freehold estate of the value of three hundred pounds sterling, clear of debt. If a non-resident in the election district, he shall not be eligible unless he be legally seized and possessed in his own right, of a settled freehold estate, in the said district, of the value of one thousand pounds sterling, clear of debt.

Senate divided into two classes and how.

Sec. 9. Immediately after the senators shall be assembled, in consequence of the first election, they shall be divided by lot, into two classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class, at the expiration of the fourth year; so that one half thereof, as near as possible, may be chosen for ever thereafter, every second year, for the term of four years.

Members of legislature

Sec. 10. Senators, and members of the house of representatives, shall be chosen on the second Monday in October next, and the day following;

and on the same days in every second year thereafter, in such manner, and at such times, as are herein directed, and shall meet on the fourth Monday in November, annually, at Columbia (which shall remain the seat of government, until otherwise determined by the concurrence of two thirds of both branches of the whole representation) unless the casualties of war, or contagious disorders, should render it unsafe to meet there; in either of which cases, the Governor or Commander-in-Chief for the time being, may, by proclamation, appoint a more secure and convenient place of meeting. when chosen, when to meet and where.

Sec. 11. Each house shall judge of the elections, returns, and qualifications of its own members; and a majority of each house shall constitute a quorum to do busines; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as may be provided by law. Validity of elections how determined. Quorum.

Sec. 12. Each house shall choose by ballot its own officers, determine its rules of proceeding, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member, but not a second time for the same cause. Adjournment from day to day. Each house to elect their own officers.

Sec. 13. Each house may punish, by imprisonment, during its sitting, any person, not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behaviour in its presence—or who, during the time of its sitting, shall threaten harm to body or estate of any member, for any thing said or done in either house; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person ordered to attend the house, in his going to or returning therefrom; or who shall rescue any person arrested by order of the house. Powers of the house to punish for contempt.

Sec. 14. The members of both houses shall be protected in their persons and estates, during their attendance on, going to, and returning from, the legislature, and ten days previous to the sitting, and ten days after the adjournment of the legislature. But these privileges shall not be extended so as to protect any member who shall be charged with treason, felony, or breach of the peace. Privileges of members and their estates.

Sec. 15. Bills for raising a revenue shall originate in the house of representatives, but may be altered, amended, or rejected by the Senate. Revenue bills.

All other bills may originate in either house, and may be amended, altered, or rejected by the other. Other bills.

Sec. 16. No bill or ordinance shall have the force of law, until it shall have been read three times, and on three several days, in each house, has had the great seal affixed to it, and has been signed, in the senate house, by the president of the senate and speaker of the house of representatives. What shall give the force of a law.

Sec. 17. No money shall be drawn out of the public treasury but by the legislative authority of the state. No monies drawn from treasury but by legislature.

Sec. 18. The members of the legislature, who shall assemble under this constitution, shall be entitled to receive out of the public treasury as a compensation for their expenses, a sum not exceeding seven shillings sterling a day, during their attendance on, going to, and returning from the legislature; but the same may be increased or diminished by law, if circumstances shall require; but no alterations shall be made by any legislature, to take effect during the existence of the legislature which shall make such alteration. Compensation to members.

Sec. 19. Neither house, during their session, without the consent of the other, shall adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. Adjournment of houses.

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Sec. 20. No bill or ordinance, which shall have been rejected by either house, shall be brought in again during the sitting, without leave of the house, and notice of six days being previously given.

Regulation about bringing in bills &c. once rejected.

What persons are excluded from legislature.

Sec. 21. No person shall be eligible to a seat in the legislature whilst he holds any office of profit or trust under this state, the United States, or either of them, or under any other power—except officers in the militia, army, or navy of this state, justices of the peace or justices of the county courts, while they receive no salaries; nor shall any contractor of the army or navy of this state, the United States, or either of them, or the agents of such contractor, be eligible to a seat in either house. And if any member shall accept or exercise any of the said disqualifying offices, he shall vacate his seat.

How vacancies in legislature shall be filled.

Sec. 22. If any election district shall neglect to choose a member or members on the days of election, or if any person chosen a member of either house should refuse to qualify and take his seat, or should die, depart the state, or accept of any disqualifying office, a writ of election shall be issued by the president of the senate, or speaker of the house of representatives, as the case may be, for the purpose of filling up the vacancy thereby occasioned, for the remainder of the term for which the person so refusing to qualify, dying, departing the state, or accepting a disqualifying office, was elected to serve.

Clergymen excluded.

Sec. 23. And whereas the ministers of the gospel are, by their profession, dedicated to the service of God, and the cure of souls, and ought not to be diverted from the great duties of their function; therefore, no minister of the gospel, or public preacher, of any religious persuasion, whilst he continues in the exercise of his pastoral functions, shall be eligible to the office of Governor, Lieutenant-governor, or to a seat in the senate or house of representatives.

ARTICLE II.

Executive. How chosen; for 2 years.

Sec. 1. The executive authority of this state shall be vested in a governor, to be chosen in the manner following; as soon as may be, after the first meeting of the senate and house of representatives, and at every first meeting of the house of representatives thereafter, when a majority of both houses shall be present, the senate and house of representatives shall, jointly, in the house of representatives, choose by ballot a governor, to continue for two years, and until a new election shall be made.

Qualification of governor.

Sec. 2. No person shall be eligible to the office of governor, unless he hath attained the age of thirty years, and hath resided within the state, and been a citizen thereof, ten years, and unless he be seized and possessed of a settled estate within the same, in his own right, of the value of fifteen hundred pounds sterling, clear of debt.

Not re-eligible for 4 years.

No person, having served two years as governor, shall be reeligtble to that office, till after the expiration of four years.

Disqualification.

No person shall hold the office of governor, and any other office, or commission, civil or military, except in the militia, either in this state, or under any state, or the United States, or any other power, at one and the same time.

Lt. Governor how chosen &c.

Sec. 3. A lieutenant-governor shall be chosen at the same time, in the same manner, continue in office for the same period, and be possessed of the same qualifications as the governor.

Sec. 4. A member of the senate or house of representatives, being chosen, and acting as governor or lieutenant-governor, shall vacate his seat, and another person shall be elected in his stead. Member of legislature vacates his seat on being elected governor or Lt governor.

Sec. 5. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the lieutenant-governor shall succed to his office. And in case of the impeachment of the lieutenant-governor, or his removal from office, death, resignation, or absence from the state, the president of the Senate shall succeed to his office, untill a nomination to those offices respectively shall be made by the senate and house of representatives, for the remainder of the time for which the officer so impeached, removed from office, dying, resigning, or being absent, was elected. Impeachment of governor or Lt. Governor. Vacancies how filled.

Sec. 6. The governor shall be commander-in-chief of the army and navy of this state, and of the militia, except when they shall be called into the actual service of the United States. Governor to command army &c.

Sec. 7. He shall have power to grant reprieves and pardons, after conviction, except in cases of impeachment, in such manner, on such terms, and under such restrictions, as he shall think proper; and he shall have power to remit fines and forfeitures, unless otherwise directed by law. May grant pardons, &c.

Sec. 8. He shall take care that the laws be faithfully executed in mercy. Shall execute the laws.

Sec. 9. He shall have power to prohibit the exportation of provisions, for any time not exceeding thirty days. May prohibit exportation of provisions.

Sec. 10. He shall, at stated times, receive for his services a compensation which shall be neither increased or diminished during the period for which he shall have been elected. His compensation.

Sec. 11. All officers in the executive department, when required by the governor, shall give him information in writing, upon any subject relating to the duties of their respective offices. Executive officers shall give information to governor.

Sec. 12. The governor shall, from time to time, give to the general assembly information of the condition of the state, and recommend to their consideration such measures as he shall judge necessary or expedient. Governor shall give information to assembly.

Sec. 13. He may, on extraordinary occasions, convene the general assembly, and, in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the fourth Monday in the month of November then ensuing. May convene Gen. Assemb. on extraordinary occasions, and adjourn legislature when they cannot agree.

ARTICLE III.

Sec. 1. The judicial power shall be vested in such superior and inferior courts of law and equity, as the legislature shall, from time to time, direct and establish. Judiciary. Courts of law and equity.

The judges of each shall hold their commissions during good behaviour; and the judges of the superior courts shall, at stated times, receive a compensation for their services, which shall neither be increased or diminished during their continuance in office: but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust, under this state, the United States, or any other power. Judges shall hold commissions during good behaviour, &c. receive compensation and disqualified from holding any other office.

Sec. 2. The style of all process shall be, "The State of South Carolina." All prosecutions shall be carried on in the name, and by the authority of the State of South Carolina, and conclude—"against the peace and dignity of the same." Stile of process

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ARTICLE IV.

Oath of office.

All persons who shall be chosen or appointed to any office of profit or trust, before entering on the execution thereof, shall take the following oath; "I do swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the office to which I have been appointed, and will, to the best of my abilities, discharge the duties thereof, and preserve, protect, and defend the constitution of this state, and of the United States."

ARTICLE V.

Representatives shall impeach.

Sec. 1. The house of representatives shall have the sole power of impeaching; but no impeachment shall be made, unless with the concurrence of two-thirds of the house of representatives.

Senate to try impeachments.

Sec. 2. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be on oath, or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

Who liable to impeachment. Punishment in case of conviction.

Sec. 3. The governor, lieutenant-governor, and all the civil officers, shall be liable to impeachment for any misdemeanor in office; but judgement in such cases shall not extend further than to a removal from office, and disqualification to hold any office of honour, trust, or profit, under this state. The party convicted shall, nevertheless, be liable to indictment, trial, judgement, and punishment, according to law.

ARTICLE VI.

How officers shall be elected. Limitation of some commissions.

Sec. 1. The judges of the superior courts, the commissioners of the treasury, secretary of the state, and surveyor general, shall be elected by the joint ballot of both houses, in the house of representatives. The commissioners of the treasury, secretary of the state, and surveyor general, shall hold their offices for four years; but shall not be eligible again for four years after the expiration of the time for which they shall have been elected.

Other officers how appointed. Sheriffs elected for 4 years.

Sec. 2. All other officers shall be appointed as they hitherto have been, until otherwise directed by law; but sheriffs shall hold their offices for four years, and not be again eligible for four years after the term for which they shall have been elected.

Style of commissions.

Sec. 3. All commissions shall be in the name and by the authority of the State of South Carolina, and be sealed with the seal of the state, and be signed by the governor.

ARTICLE VII.

Laws to continue of force until altered.

All laws of force in this state at the passing of this constitution, shall so continue until altered or repealed by the legislature; except where they are temporary, in which case they shall expire at the times respectively limited for their duration, if not continued by act of the legislature.

ARTICLE VIII.

Sec. 1. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall, forever hereafter, be allowed within this state to all mankind; provided, that the liberty of conscience thereby declared, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state. Free exercise of any religious profession. Proviso.

Sec. 2. The rights, privileges, immunities, and estates, of both civil and religious societies and of corporate bodies, shall remain as if the constitution of this state had not been altered or amended. Rights &c. preserved to corporate and other bodies.

ARTICLE IX.

Sec. 1. All power is originally vested in the people; and all free governments are founded on their authority, and are instituted for their peace, safety and happiness. Declaration of rights.

Sec. 2. No freeman of this state shall be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land; nor shall any bill of attainder, ex post facto law, or law impairing the obligation of contracts, ever be passed by the legislature of this state.

Sec. 3. The military shall be subordinate to the civil power.

Sec. 4. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Sec. 5. The legislature shall not grant any title of nobility, or hereditary distinction, nor create any office, the appointment to which shall be for any longer time than during good behaviour.

Sec. 6. The trial by jury, as heretofore used in this state, and the liberty of the press, shall be for ever inviolably preserved.

ARTICLE X.

Sec. 1. The business of the treasury shall be in future conducted by two treasurers, one of whom shall hold his office and reside in Columbia; the other shall hold his office and reside in Charleston. Treasury how conducted.

Sec. 2. The secretary of state, and the surveyor general, shall hold their offices both in Columbia and Charleston. They shall reside at one place, and their deputies at the other. And secretary's office, &c.

Sec. 3. At the conclusion of the circuits, the judges shall meet and sit at Columbia, for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgements, and such points of law as may be submitted to them. From Columbia they shall proceed to Charleston, and there hear and determine all such motions for new trials, and in arrest of judgement, and such points of law, as may be submitted to them. Judges shall meet at Columbia after circuit.

Sec. 4. The governor shall always reside, during the sitting of the legislature, at the place where their session may be held, and at all other times, wherever, in his opinion, the public good may require. Governor shall reside where legislature sits, during session.

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Sec. 5. The legislature shall, as soon as may be convenient, pass laws for the abolition of the rights of primogeniture, and for giving an equitable distribution of the real estate of intestates.

Rights of primogeniture to be abolished.

ARTICLE XI.

Convention to be called by two-thirds of legislature.

No convention of the people shall be called, unless by the concurrence of two-thirds of both branches of the whole representation.

Constitution how to be altered.

No part of this constitution shall be altered, unless a bill to alter the same shall have been read three times in the house of representatives, and three times in the senate, and agreed to by two-thirds of both branches of the whole representation; neither shall any alteration take place until the bill so agreed to, be published three months previous to a new election for members to the house of representatives; and if the alteration proposed by the legislature shall be agreed to in the first session, by two-thirds of the whole representation* in both branches of the legislature, after the same shall have been read three times, on three several days, in each house, then, and not therwise, the same shall become a part of the constitution.

Done in convention at Columbia, in the State of South Carolina, the third day of June, in the Year of our Lord 1790, *and in the* 14*th year of the Independence of the United States of America.*

By the unanimous order of the Convention.

CHARLES PINCKNEY,

President.

Attest,

JOHN S. DART, *Secretary.*

THAT NO INCONVENIENCE MAY ARISE FROM THE ALTERATIONS AND AMENDMENTS IN THE CONSTITUTION OF THIS STATE, IT IS HEREBY DECLARED AND ORDAINED:

Provisions until new constitution can operate.

Sec. 1. That the government shall be administered as heretofore, until the meeting and sitting of the legislature, to be held under this constitution.

Sec. 2. And whereas, the existing laws render it highly inconvenient for the legislature to meet on the fourth Monday in November, next, it is therefore ordained, that instead thereof, the members of the senate and house of representatives, to be elected on the second Monday in October, and on the day following, shall meet at Columbia, the seat of government, on the first Monday in January next.

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* The words "by two-thirds of the whole representation," are omitted in Grimke's copy of the Constitution of South Carolina.—EDIT.

Sec. 3. It is also ordained that the commissioners of the treasury shall, with all convenient dispatch, take a balance of the treasury books, which balance shall be lodged in the treasurer's office in Columbia, and the original books in the treasurer's office in Charleston.

Sec. 4. It is the opinion of the convention, that the legislature, at the first session which shall be held under this constitution, should regulate and establish by law, all the fees of the respective courts and offices throughout this state.

Sec. 5. That they also provide for the annual and final settlement of the accounts of the commissioners of the treasury, so that the pecuniary interest of the state be duly attended to, and the persons who faithfully discharge the duties of that important office be quieted therein, and their sureties released in a fixed and reasonable time.

Sec. 6. That the legislature shall make effectual provision for revising, digesting and publishing the laws of this state, so as that a general knowledge thereof may be diffused among the citizens of this state.

Sec. 7. The legislature at their next meeting shall proceed to the election of justices of the peace throughout the state, and justices of the county courts where county courts are established, and that all former commissions of the peace then cease; and that in future all commissions of the peace expire at fixed periods, to be declared by law.

Sec. 8. That all rotatory officers, at the first meeting of the legislature under this constitution, may be re-elected, notwithstanding any time they may have before served under the former constitution.

By the unanimous order of the Convention, June 3, 1790.

CHARLES PINCKNEY,

President.

Attest,

JOHN SANDFORD DART, *Secretary.*

AMENDMENTS TO THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA.

AMENDMENTS, RATIFIED DECEMBER 17, 1808.

The following sections in amendment of the third, seventh, and ninth sections of the first article of the constitution of this State, shall be, and they are hereby declared to be valid parts of the said constitution: and the said third, seventh, and ninth sections, or such parts thereof as are repugnant to such amendments, are hereby repealed and made void.

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The house of representatives shall consist of one hundred and twenty-four members; to be apportioned among the several election districts of the State, according to the number of white inhabitants contained, and the amount of all taxes raised by the legislature, whether direct or indirect, or of whatever species, paid in each, deducting therefrom all taxes paid on account of property held in any other district, and adding thereto all taxes elsewhere paid on account of property held in such district; an enumeration of the white inhabitants for this purpose shall be made in the year one thousand eight hundred and nine, and in the course of every tenth year thereafter, in such manner as shall be by law directed; and representatives shall be assigned to the different districts in the above mentioned proportion, by act of the legislature at the session immediately succeeding the above enumeration.

If the enumeration herein directed should not be made in the course of the year appointed for the purpose by these amendments, it shall be the duty of the Governor to have it effected as soon thereafter as shall be practicable.

In assigning representatives to the several districts of this State, the legislature shall allow one representative for every sixty-second part of the whole number of white inhabitants in the State; and one representative also for every sixty-second part of the whole taxes raised by the legislature of the State. The legislature shall further allow one representative for such fractions of the sixty-second part of the white inhabitants of the State, and of the sixty-second part of the taxes raised by the Legislature of the State, as, when added together, form a unit.

In every apportionment of representation under these amendments, which shall take place after the first apportionment, the amount of taxes shall be estimated from the average of the ten preceding years; but the first apportionment shall be founded upon the tax of the preceding year; excluding from the amount thereof the whole produce of the tax on sales at public auction.

If in the apportionment of representatives under these amendments, any election district shall appear not to be entitled, from its population and its taxes, to a representative, such election district shall, nevertheless, send one representative; and if there should be still a deficiency of the number of representatives required by these amendments, such deficiency shall be supplied by assigning representatives to those election districts having the largest surplus fractions, whether those fractions consist of a combination of population and taxes, or of population or of taxes separately, until the number of one hundred and twenty-four members be provided.

No apportionment under these amendments shall be construed to take effect in any manner, until the general election which shall succeed such apportionment.

The election districts for members of the House of Representatives, shall be and remain as heretofore established, except Saxegotha and Newberry, in which the boundaries shall be altered as follows, viz: That part of Lexington in the fork of Broad and Saluda rivers, shall no longer compose a part of the election district of Newberry, but shall be henceforth attached to and form a part of Saxegotha. And also except Orange and Barnwell, or Winton, in which the boundaries shall be altered as follows, viz: That part of Orange in the fork of Edisto, shall no longer compose a part of the election district of Barnwell or Winton, but shall be henceforth attached to and form a part of Orange election district.

The Senate shall be composed of one Member from each election district, as now established for the election of members of the House of Representatives, except the district formed by the Parishes of St. Philip and St. Michael, to which shall be allowed two Senators as heretofore.

The seats of those Senators who under the constitution shall represent two or more election districts, on the day preceding the second Monday of October, which will be in the year one thousand eight hundred and ten, shall be vacated on that day, and the new Senators who shall represent such districts under these amendments, shall, immediately after they shall have been assembled under the first election, be divided by lot into two classes; the seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year; and the number of these classes shall be proportioned, that one half of the whole number of senators may, as nearly as possible, continue to be chosen thereafter every second year.

None of these amendments becoming parts of the constitution of this State, shall be altered, unless a bill to alter the same shall have been read on three several days in the House of Representatives, and on three several days in the senate, and agreed to at the second and third reading, by two thirds of the whole representation, in each branch of the legislature; neither shall any alteration take place, until the bill so agreed to, be published three months previous to a new election for members to the House of Representatives; and if the alteration proposed by the legislature shall be agreed to in their first session, by two-thirds of the whole representation, in each branch of the Legislature, after the same shall have been read on three several days in each house, then, and not otherwise, the same shall become a part of the constitution.

AMENDMENT, RATIFIED DECEMBER 19, 1810.

That the fourth section of the first article of the constitution of this State be altered and amended to read as follows: Every free white man of the age of twenty-one years, paupers and non-commissioned officers and private soldiers of the army of the United States excepted, being a citizen of this State, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land or a town lot, of which he hath been legally seized and possessed at least six months before such election, or not having such freehold or town lot, hath been a resident in the election district in which he offers to give his vote, six months before the said election, shall have a right to vote for a member or members to serve in either branch of the legislature for the election district in which he holds such property, or is so resident.

AMENDMENT, RATIFIED DECEMBER 19, 1816.

That the third section of the tenth article of the Constitution of this State be altered and amended to read as follows: The judges shall, at

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such times and places as shall be prescribed by act of the legislature of this State, meet and sit for the purpose of hearing and determining all motions which may be made for new trials, and in arrest of judgment, and such points of law as may be submitted to them.

AMENDMENT, RATIFIED DECEMBER 20, 1820.

That all that territory lying within the chartered limits of this State, and which was ceded by the Cherokee nation, in a treaty concluded at Washington, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and sixteen, and confirmed by an act of the legislature of this State, passed on the nineteenth day of December, in the same year, shall be, and the same is hereby declared to be annexed to, and shall form and continue a part of the election district of Pendleton.

AMENDMENT, RATIFIED DECEMBER 19–20, 1828.

That the third section of the fifth article of the constitution of this State, shall be altered to read as follows, viz:

Sec. 3. The governor, lieutenant-governor, and all civil officers, shall be liable to impeachment for high crimes and misdemeanors, for any misbehaviour in office, for corruption in procuring office, or for any act which shall degrade their official character. But judgement, in such cases, shall not extend farther than to removal from office, and disqualification to hold any office of honour, trust, or profit, under this State. The party convicted shall, nevertheless, be liable to indictment, trial, judgment and punishment, according to law.

Sec. 4. All civil officers, whose authority is limited to a single election district, a single judicial district, or part of either, shall be appointed, hold their office, be removed from office, and in addition to liability to impeachment, may be punished for official misconduct, in such manner as the Legislature, previous to their appointment, may provide.

Sec. 5. If any civil officer shall become disabled from discharging the duties of his office, by reason of any permanent bodily or mental infirmity, his office may be declared to be vacant, by joint resolution agreed to by two-thirds of the whole representation in each branch of the Legislature: *Provided*, That such resolution shall contain the grounds for the proposed removal, and before it shall pass either house, a copy of it shall be served on the officer, and a hearing be allowed him.

AMENDMENT, RATIFIED DECEMBER 6, 1834.

That the fourth article of the Constitution of this State shall be amended so as to read as follows, viz: Every person who shall be chosen or

appointed to any office of profit or trust, before entering on the execution thereof, shall take the following oath: "I do solemnly swear (or affirm) that I will be faithful, and true allegiance bear to the State of South Carolina, so long as I may continue a citizen thereof; and that I am duly qualified, according to the Constitution of this State, to exercise the office to which I have been appointed; and that I will, to the best of my abilities, discharge the duties thereof, and preserve, protect and defend the Constitution of this State, and of the United States: So help me God."

RESOLUTIONS OF THE TWO HOUSES, CONCERNING THE 4TH SECTION OF THE CONSTITUTION.

PASSED DECEMBER 17, 1831.

(Pamphlet Laws, Reports, Resolutions and Journals for the year 1831, *p.* 55.*)*

In the House of Representatives, December 17, 1831.

Resolved, That the act altering the 4th section of the Constitution of the State of South Carolina, be herewith published, to wit: "Every free white man of the age of twenty-one years, (paupers and non-commissioned officers and privates of the Army of the United States excepted) being a citizen of this State, and having resided therein two years previous to the day of election, and who has a freehold of fifty acres of land, or a town lot, of which he has been legally seized and possessed at least six months before such election, or not having any such freehold or town lot, hath been resident in the election district, in which he offers to give his vote, before the election six months, shall have a right to vote for a member or members to serve in either branch of the Legislature, for the election district in which he holds such property or residence."

Resolved, That the two years residence required by the Constitution in a voter, are the two years immediately previous to the election, and the six months residence in the election district, are the six months immediately previous to the election; but if any person has his home in the State he does not lose the right of residence by temporary absence with the intention of returning; and if he has his home in the election district, his right to vote is not impaired by a temporary absence with the intention of returning. But if one has his home and family in another State, the presence of such person, although continued for two years in the State, gives no right to vote.

Resolved, That the House do agree in the Report. Ordered to be sent to the Senate for concurrence.

By order of the House,

R. ANDERSON, C. H. R.

In Senate, December 17, 1831.

Resolved, That the Senate do agree. Ordered to the House of Representatives. By order of the Senate.

JACOB WARLEY, C. S.

RESOLUTIONS OF THE TWO HOUSES, RESPECTING ELECTIONS, AND THE 4TH SECTION OF THE CONSTITUTION OF THIS STATE.

PASSED DECEMBER 10, 1833.

(Pamphlet Laws, Reports and Resolutions for 1833, *pages* 53-54.*)*

In the House of Representatives, Dec. 18, 1833.

Resolved, That the Managers of Election, prior to their proceeding to the elections, do take the following oath or affirmation before some magistrate, or one of the managers of election, to wit: "That they will faithfully and impartially carry into execution the foregoing elections, agreeably to the constitution of the State of South-Carolina."

Resolved, That in future no person qualified to vote for members of each branch of the legislature, shall be permitted to vote in more than one election district or parish; and the managers of elections throughout this State, are hereby required and directed, if they think proper, or on the application of any elector present, to administer to any person or persons offering to vote, the following oath: "I, A. B. do solemnly swear (or affirm, as the case may be) that I have not at this general election for members of the legislature, voted in this or any other district or parish, and that I am constitutionally qualified to vote. So help me God." And if any person or persons required, as aforesaid, to take said oath or affirmation, shall refuse to do so, then the managers respectively in their respective election districts and parishes shall be, and they are hereby required and enjoined to refuse such vote or votes; and in case the managers shall refuse to require the oath as aforesaid, when demanded, they shall be liable to all the pains and penalties they would be liable and subject to for neglecting any other duties required of them as managers of elections for either branch of the legislature.

Resolved, That the act altering the 4th section of the constitution of the State of South Carolina be herewith published, to wit: "Every free white man of the age of twenty-one years (paupers and non-commissioned officers and privates of the army of the United States excepted) being a citizen of this State, and having resided therein two years previous to the day of election, and who has a freehold of fifty acres of land, or a town lot, of which he has been legally seized and possessed at least six months before such election, or not having any such freehold or town lot, hath been resident in the election district, in which he offers to give his vote, before the election six months, shall have a right to vote for a member or members to serve in either branch of the legislature, for the election district in which he holds such property or residence."

RESOLUTIONS CONCERNING ELECTIONS.

Resolved, That the two years' residence required by the constitution in a voter, are the two years immediately previous to the election; and the six months' residence in the election district, are the six months immediately previous to the election: but if any person has his home in the State, he does not lose the right of residence by temporary absence, with the intention of returning; and if he has his home in the election district, his right to vote is not impaired by a temporary absence with the intention of returning: but, if one has his home and family in another State, the presence of such person, although continued for two years in the State, gives no right to vote.

Resolved, That the aforesaid managers do advertise the said elections, together with these resolutions, in three or more public places within their respective districts and parishes, and at every place of election.

Resolved, That the House do concur. Ordered, that it be sent to the Senate for concurrence.

By order of the House,

R. ANDERSON, C. H. R.

Resolved, That the Senate do concur Ordered, that it be returned to the House of representatives.

By order of the Senate

JACOB WARLEY, C. S.

DOCUMENTS AND RECORDS,

CONCERNING FEDERAL RELATIONS GENERALLY: THE TARIFF OF PROTECTION AND PROHIBITION: CONSOLIDATION: STATES RIGHTS: NULLIFICATION: POWER OF THE FEDERAL JUDICIARY: SECESSION: COERCION: ALLEGIANCE: SUPREMACY OF THE MAJORITY: GENERAL WELFARE: INTERNAL IMPROVEMENTS.

Preliminary observations by the Editor, illustrative and explanatory of the preceding questions.

The legislative acts and resolutions of South Carolina on these subjects, and the proceedings of the Convention of this State, occasioned by a series of usurpations on the part of Congress from the year 1820 to the present time, will be found in the documents that follow this note. They constitute by far the most prominent and important part of the legislative history of South Carolina; and they contain evidence of so much constitutional knowledge, so much able political disquisition, and so much fearless honesty both in reasoning and in conduct, that the Editor has deemed it an imperious duty to preserve every important *record* relating to this most interesting struggle. Nor is the contest over. Every year produces reasonable apprehension of some new attack; and the documents that embody our able defences of States Rights against federal usurpation, have not lost, but greatly gained, in interest and in value. They contain a mass of enlightened disquisition, to which those who succeed us will be glad to resort. Until the present volume, they have been printed and dispersed in a loose and pamphlet form, not calculated for preservation; and the citizens of this State who mingled in that exciting contest, will not be sorry to find them collected in a durable publication.

The Editor has thought fit to preface these documents with notice of the prominent facts and arguments that bear upon the subjects discussed; believing that a brief summary, with some explanatory remarks upon a part of our State history so important to others and so honorable to ourselves, would meet with the reader's indulgence. Circumstances worth remembering, that are commonly known at the present day, will pass away and be forgotten a dozen years hence. A few pages dedicated to their preservation may be deemed allowable for the sake of those who come after us. The Editor has inserted some resolutions and proceedings of other States, which having been recorded in the Pamphlet Laws and Resolutions of South Carolina, by direction of our own legislature, he did not feel himself at liberty to reject.

The government under which we live, is of a double character. The Colonies of Great Britain in North America formed themselves, on the 4th July, 1776, into thirteen distinct communities or nations, each of them, like every other nation, independent of the others, with distinct forms of government, and separated into distinct and circumscribed

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territories and localities. Finding that although they were separated as national sovereignties and communities, they had many objects of common interest involving their common defence and common welfare, they formed a CONFEDERATION, on the 8th July, 1778, to protect all those interests that they had in common; preserving, however, to each, its separate Sovereignty and Independence. They did not meet as one people: they did not amalgamate into one consolidated community, or renounce their separate forms of government, or their distinct national character, or national rights, in any other respect than such as were comprized in their new erected agency or confederation, established to protect common rights and common interests. This sufficed through the revolutionary struggle: at the Treaty of peace, the colonies were recognized by Great Britain as well as by the rest of Europe, as distinct independent communities, with the usual rights of sovereign nations. Under that character they treated with Great Britain in 1783. The confederation of 1778 did not continue to work well, for want of more effectual and extensive powers. A CONVENTION of the several states therefore was called, and assembled in 1787, to amend and improve that confederation. It was a convention not of the people, but of the States; in their state capacity: the members were elected, not by the people but by the States: they were called as states, they met as states, they verified their powers as states, they voted as states; and they formed a Constitution for the UNITED STATES; which was ratified, not by the people, but by the several states. Attempts were made to introduce the Convention to the public, not as representing an union or confederation of independent communities, but as the representatives of one undivided people or nation. With this view, the term "*national*" was adopted in all the early proceedings of the Convention, until the 25th of June, 1787; when the design being seen through, the adopted term *national* was struck out on express motion, and the words *United States* substituted in its place. The leading idea that pervades the Constitution of 1787, is, that the Government or Agency then erected, should have the exclusive controul over our foreign relations, as to peace and war, treaties of commerce, &c. and every question involving indiscriminately and by direct operation the whole of the United States. While every thing comprised in our domestic relations, our internal and territorial government, should remain under the exclusive controul of the individual states, not to be encroached upon or touched by the federal government. To ensure this, however, the Convention did not content itself with a general discrimination and separation of powers, but enumerated and conceded specifically and expressly such as they chose to grant, and refused many that were proposed. Surely a power proposed, debated, and negatived by the Convention, cannot now be assumed either directly or indirectly, without fraudulent contrivance or manifest usurpation.

On the 18th day of August, the following powers were proposed in the Convention to be vested in the Congress of the United States.

To grant *Charters of Incorporation generally.*

To grant *Charters of Incorporation* in cases where the public good may require them, and the authority of a single state may be incompetent.

(In discussing the constitutionality of the first United States bank bill, Mr. Madison asserted, that the proposition to vest in Congress such a power, had been made in the Convention and rejected.)

To establish an *University.*

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To encourage by proper premiums and provisions, the advancement of useful knowledge and discoveries.

To establish public institutions, rewards and immunities, for the promotion of agriculture, commerce, trades and manufactures.

To regulate stages on postroads.

All these proposals were rejected: none of them are to be found in the Constitution as it stands.

On the 20th of August, 1787, it was proposed in Convention, that to assist the President in conducting the public affairs, there shall be a council of State, of the following officers among others, viz: The Secretary of domestic affairs, who shall be appointed by the President, and hold his office during pleasure. It shall be his duty to attend to matters of general police, the state of agriculture and manufactures, the opening of roads and navigations, and the facilitating communications through the United States: and he shall from time to time recommend such measures and establishments as may tend to promote these objects: *negatived.* (See Journal of the federal Convention, p. 265.)

No one can pretend to say after this, that manufactures and Internal improvements were not duly brought before the Convention as subjects of consideration. But further: on the 14th of September, three days before the Convention broke up, Internal Improvements were again pressed and urged on the meeting. For the report of the committee of revision being brought up and read, it was proposed, that Congress should have power to grant letters of incorporation for Canals, &c. and that this should be added to the 8th Section of the first article. *Passed in the negative.*

On the same day it was again proposed to establish an University; *negatived.*

What becomes, after this, of the omnipotent discretion of a Congress Majority? Of the supreme importance of the general welfare? Of a protecting Tariff in favor of manufactures? Of a grand system of Internal Improvements? The subjects were distinctly brought before the Convention; which absolutely refused to concede these powers to Congress, or any of them: the proposals were acted on and negatived. Can these powers be now assumed by Congress, in open defiance of the Convention and Constitution, which refused to sanction them? Yet in the teeth of these proceedings, did Mr. J. Q. Adams, in a message as President, recommend a national University; a national Observatory; a system of Internal Improvement, that would take 100 millions from the hard earnings of the people's industry; operating as a bribe, offered to such states as might be selfish enough to accede to this usurpation; and a standing brigade of 66 Engineers, to be employed in surveying national roads, national canals, national fortifications, and drawing paper surveys without use or end. The exposition made of this most extravagant and unconstitutional proposal, by our Senator Judge Smith, contributed greatly to bring it into disrepute.

The first organized attack on the Constitution began with the TARIFF OF PROTECTION.

MANUFACTURES are not fitted for a country of sparce population; the supply of labour at a moderate rate, must be plentiful, and easily obtained. Gen. Alexander Hamilton, appointed Secretary of the Treasury in 1790, presented in 1791 four reports; on public credit; on a national bank; on a mint; and on manufactures. This last was evidently premature. But the feature of his report, was not a distinct tariff of protection, but a revenue tariff acting in that way. His general proposal was

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an increase of duties from 5 per cent to 7½ per cent. Woollens were afterwards subjected, *for revenue purposes merely*, to a duty of 7½, 12, and in 1804 of 15 per cent, in aid of the Mediterranean fund against the Barbary powers. There was nothing to alarm in all this. About the years 1811 and 1812, such was the paralysing influence of the federal party during the then war with Great Britain—of a body of merchants and British agents indebted to Great Britain—of retail store-keepers indebted to British importers—of a people indebted to retail merchants—and a body of lawyers attached by interest as well as inclination to the then all powerful monied interest—that the present editor, stating the difficulties that arose from the acknowledged principles of political economy calling for free trade, proposed a domestic system of such manufactures as were of the first necessity, to counteract this enormous British influence; and he revived the "*Emporium*" as a repository of manufacturing information. That publication fell through in about three years, from the difficulties of collection induced by the state of war. Whether the influence of federal politics and British agency, were causes sufficient to justify the measure proposed, he had subsequent reasons to doubt. The first regular tariff of protection was in 1816; introduced on the reasonable pretence (in part) of protecting those manufactures during peace, that had been of use to the country during the war. This measure was supported by Mr. Calhoun, Mr. Lowndes, Mr. Barbour, Mr. Crawford, &c. The duties were fixed at 25 per cent, to fall to 20 per cent in 1820. This fall was never permitted to take place. The sweets of monopoly had been tasted. In the debate of 1820, Mr. Lowndes, alarmed at the symptoms of monopoly, took a decided stand against the Tariff then proposed.

About the year 1818, a plan began to be organized to establish a comprehensive *system* of domestic manufactures, to the total exclusion of all British importation. This plan was at that time communicated to the present Editor in Philadelphia for his concurrence; which was refused. The war was over. But an association for the purpose was regularly established in that city. In July, 1819, he wrote an Essay against the justice and policy of a Tariff of protection, in the Analectic Magazine, to which Mr. Matthew Carey wrote a reply in the August number of the same work.* On the 12th of September, 1820, a very able memorial against the proposed Tariff, drawn up by Stephen Elliott, Esq. was adopted by the citizens of Charleston. These proceedings were succeeded by the strong resolutions of the merchants of Boston, (attributed to Mr. Daniel Webster) against a protecting Tariff, October 3, 1820; and by the memorial presented to Congress to the same purpose, from a meeting of commercial delegates assembled at Philadelphia, November 4, 1820, (attributed to Mr. Horace Binney.) On the other hand, meetings in support of a protecting Tariff, were held at Philadelphia, Nov. 8, and 15, 1819, and in New York, Nov. 29, 1819.

In the Session of 1819—1820, an increase of the Tariff was proposed in Congress: against which the citizens of Chesterfield in this State, drew up a memorial which was presented to our legislature and reported on December 8, 1820, but is omitted among the resolutions and reports of that year. That report, adopted by the house, shows clearly that many parts of the State were as yet in the infancy of knowledge, as to

* Dr. Cooper had no views of any situation in South Carolina at that time. Dr. Darrell Smith, the Chemical Professor, and Dr. Maxcy, the President, then living, and in full health.

States rights and constitutional information. In 1820, when by the compromise of 1816, the duties *ought* to have been reduced to 20 per cent, the northern delegates raised a committee of manufactures, not to diminish but increase the Tariff. Of this committee, the present Judge Baldwin, then delegate from Pittsburgh, was Chairman; and his Tariff of protection was strenuously supported by Mr. Rich, of Vermont. It is curious to remark the gross ignorance of the plainest principles of political economy prevalent among the advocates of the *American system*, of that day. The Tariff, it was said, was meant—to render us independent of foreign nations—to keep gold and silver at home—to prevent a ruinous balance of trade against us—to foster our national industry—to take advantage of machinery—to protect establishments now in existence—to provide a home market for the farmer's produce—to employ our idle population. It would be a disgrace for any man of the present day to attempt a refutation of absurdities so palpable; so utterly void are they of any reasonable influence, except where self interest is blind to their fallacy.

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But the influence of the manufacturing monopolists carried with them the northern majority in Congress, and the "*American System*" was supported with the avowed intention of excluding every article of foreign produce or manufacture that by the aid of protecting duties could be raised at home.

In 1824 another committee of manufactures was raised, of which Mr. Todd was Chairman. The bill brought in by Mr. Todd was distinctly, openly, expressly declared by him on the floor of Congress on the 10th of February 1824, to be in no respect a revenue bill, but intended for the purpose of checking and preventing all foreign importation that would interfere with home production. In this year the Tariff on woollens was raised nominally to 33, really to 38 per cent. The tide of protection rolled on unchecked till, in 1828, the bill introduced by Mr. Mallory, Chairman of the committee of manufactures, and passed by a northern majority utterly regardless of the complaints and sufferings of the South, gave rise to a determined opposition, in which South Carolina took the risk and the lead. Wearied of unavailing remonstrance, in 1832 she called a Convention of her people, and declared the Tariff law unconstitutional, null, and void. The result was, the existing compromise act introduced by Mr. Clay.

During Mr. Canning's administration in England, Mr. Huskisson brought forward Dr. Adam Smith's doctrine of free trade; the *principle* met with little or no opposition; but the Government had to disentangle gradually and cautiously the practical errors and mistakes of the protecting and prohibiting system for two centuries preceding, before it could go into full operation. The admirable memorial of the Merchants of Great Britain, April 20, 1820, in favour of Free Trade, was presented to Lord Liverpool, who expressed his "*entire*" concurrence with the principles advanced in it; and he did proceed as fast as circumstances would admit, to put Mr. Huskisson's views in force. Since that time, much has been done in Great Britain in favor of free trade, and much remains to be done. The hostility of the Landlord-aristocracy of that country still defends with obstinate perseverance the *corn-law system*. That system itself, with the hereditary legislation that defends it, is now tottering on its base; and in a few years will serve only as a characteristic specimen of the power of prejudice, the wisdom of our ancestors, and the patriotism of a house of Lords.

The example of enlightened Europe had no effect on the northern majority in Congress. That majority determined at all hazards to

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fasten on the South the manufacturing monopoly called the "*American System*;" and had it not been for the persevering opposition of South Carolina, not merely by an appeal to facts and arguments altogether irresistable, but by fearlessly and devotedly throwing herself alone into the gulf of danger when coercion was insolently threatened, the South would have been doomed to linger on to the present time, with this canker worm preying on her vitals; and even the half measured compromise of Mr. Clay, would not have been proposed. It is our duty to be aware, that the foe is beaten off indeed, but not conquered. That child of vindictive despotism, the FORCE BILL, is not yet repealed by Congress. Tyranny and Selfishness never sleep; and we are safe only by cherishing among ourselves an unrelaxing military spirit, and propagating among our citizens correct ideas on the all important science of political economy. If we do this, our determinations may be taken not boldly only, but understandingly. Mr. Clay's compromise will be sustained by the north, if the north should deem it prudent to abide by that agreement. Even though the prosperous state of the revenue, should call aloud for its abolition. But had the late threatened war with France taken place, the protecting and prohibitory Tariff would have been resorted to, under the mask of a revenue measure, as a convenient means of throwing the expense of northern losses on southern agriculture; and of grasping for the emolument of the north, the whole profit of a protracted and enormous war expenditure. In fact, every known government,) of all consumers the most reckless, extravagant, and wasteful) is desirous of raising as great an amount of taxation with as little outcry as possible. Money gives patronage, and patronage gives power. Every Government, therefore, is in favour of Tariffs and Custom house taxation; because it enables them to blind the people, not only by dextrously involving the tax with the price of the commodity, but by raising up also an immense patronage of useless custom house officers, whose salaries the people are duped to pay, as if they were absolutely necessary to the support of society!

These proceedings of the northern majority in Congress, made a deep and very unfavourable impression on the southern section of the Union. An impression which unfortunately subsequent events have not tended to efface. The claim was arrogated and distinctly set up on this occasion, that a majority had a right to govern with absolute sway, on the principle of general welfare, without being estoped by claim of right on the part of the minority—that it belonged to a majority, as such, to decide on the constitutional limits of entrusted powers, and to construe them as might best suit the views of that majority, in respect to the General Welfare—that the imposition of a Tariff taxation bearing with almost exclusive weight on the industry of the South, and the voting of enormous sums for internal improvement, not sanctioned by any character of general necessity or federal utility—were all of them subjects proper to be submitted to the discretion of Congress, and within the uncontrouled power of a majority in the legislature of the Union. These claims and positions are still boldly persevered in; and among northern Jurists are fast assuming the aspect of settled doctrine. They must therefore at all hazards be resisted. If the south be true to her own rights and her own interests, those claims *will be resisted, at all and every hazard.* And so have the people of South Carolina determined, and so have they fearlessly acted, as the ensuing documents will fully show. The course so honourably adopted for a dozen years past, in the state, must be

persevered in, till the selfish tenets of political usurpation are prostrate, to threaten us no more.

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The great excitement produced in South Carolina by the agitation of these questions, that of the Tariff in particular, made all our citizens political economists. But the events have passed away, the compromise act has produced a quiescent state of public feeling, and the arguments against a protecting and prohibitory tariff may, in a few years of apathy and slumber, escape from public recollection. My firm persuasion is, however, that occasions will occur, or be purposely introduced, within no long period, again to propose a Tariff actually of this character; and plausible pretences for the purpose can easily be found. I deem it therefore not alien from the duty I have undertaken, to accompany the State proceedings on the Tariff, with a brief summary of the principal arguments by which such a Tariff may be fairly and effectually opposed, should it be hereafter introduced.

These arguments relate *first*, to the unconstitutionality of a protecting Tariff. *Secondly*, to the injustice of this measure. *Thirdly*, to its inexpedience, on general principles applicable to all states of Society.

The Tariffs proposed by Messrs. Baldwin, Todd and Mallory, were openly and distinctly proposed, not as measures of Revenue, which Mr. Todd declared was not needed, but as a system to protect domestic against the competition of foreign industry. Yet on the face of them they are *Revenue Acts!* I see no *constitutional* objection to a Tariff equally and honestly imposed for mere purposes of revenue, and to supply the real wants of the Treasury. But the political economists of Europe are now settled in opinion, that of all modes of taxation it is the most objectionable; and that the welfare of society requires every kind of taxation on the introduction of foreign commodities to be repealed. Commerce is a labor-saving machine; it not only supplies from abroad those wants that we cannot supply at home, but it supplies articles that are wanted, at a less expense, by bringing the commodities that are called for, from the places where they are plentiful and cheap. It is this feature of Commerce that affords the temptation to a Tariff. The welfare and happiness of every community, dictates that the people should be permitted to lay out their honest earnings wherever they can purchase to the best advantage: and if they *are* to be taxed, they should be enabled to see precisely how much is exacted from them by Government, and for what public purpose. A custom-house Tariff is purposely framed to conceal all this. The real value of the commodity, the tax itself, the merchant's charge for the trouble it occasions, and the interest on so much of his capital as the payment of the tax requires, are all involved in one general sum constituting the price of the commodity: and this price is augmented by the tariff taxation at every hand through which the commodity passes, from the first wholesale importer to the last retailer, where the original tax is in many cases doubled. This complication renders it almost impossible for the consumer to ascertain how much is tax, and how much is price. The people should remember, that all mystery is prima facie evidence of fraud: a position which the experience of history has taught us to regard as one not now to be contested. The strong condemnation by Joseph Barlow of the custom house system of indirect taxation, copied into 21 Niles' Register, p. 165, is true in its utmost extent.

On the question of the unconstitutionality of the Tariff, two books of authority are necessary to be consulted. Viz, "Mr. Yates' account of the "secret debates in the Conventian of 1787; to which is added the history "of the proceedings in the Convention, by Luther Martin, Delegate from

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"Maryland, in a letter to his constituents." Also, "a journal of the acts "and proceedings of the Convention which formed the Constitution of the "United States, from May 14th to Sept. 17th 1787. Published by "order of the President of the United States, in conformity to a reso- "tion of Congress of March 27, 1818."

First, then, as to the constitutionality of a protecting Tariff. If the framers of our constitution, having the subject before them, refused to sanction such a measure, or to give the power of imposing it to Congress, the exercise of that power by Congress, is bold and fraudulent usurpation. I copy from a pamphlet published by the present Editor, at the meeting of the Convention of South Carolina, at Columbia, in 1832, entitled "Hints and Suggestions on the busines of the Convention."

"And whereas, the United States by their representatives in CONVENTION met, in the year 1787, to consider of those circumstances and interests which alike concerned every State of the Union in its capacity as an independent State; to settle the terms of the compact under which they should become an united community of Sovereign States; and the form of government which they should adopt for this purpose; and to appoint the various departments and description of officers by which that government should be conducted; with the powers, authorities and jurisdictions which they deemed necessary for this purpose; conferring these only, no other, and no more—performed this, by enacting the mutual State compact, called the Constitution of the United States:

"The general government, therefore, as it is popularly termed, consisting of the Legislative, Executive and Judicial departments of the United States, with all the subordinate apparatus of Officers thereto belonging, is an agency merely, created by the Convention of States in 1787 for specific purposes of general policy, to execute specific trusts, and perform specific duties and services, for which each member of each department receives a specific compensation, as in case of all other Agents, whether public or private: and for the purpose of enabling each Department to perform the duties and execute the trusts required of them, certain defined and specific powers, authorities and jurisdictions, are delegated, within whose limits each department is strictly confined; which is indeed universally the case, with every agent of whatever description, to whom powers and authorities are delegated by his principal, to enable him to execute the trusts committed to him, and perform the duties required of him. This universal Law of principal and agent, embraces the case before us.

"While the Agent keeps within the limits of the authority with which he is invested by the instructions of his Principal, his acts are legal and valid, and the principal is bound by them. If the Agent exceeds the instructions of the Principal his acts are null and void, his Principal is not bound by them, and may refuse to ratify them. In the present case, the Principal consists of each separate State, that united to draw up the Document of Instructions called the *Constitution;* the Agent, is the General Government, comprising the departments to which that Constitution gave origin and authority.

"The Convention of States in 1787 having finished their labours, embodied them in the *Constitution of the United States.* To that Constitution, therefore, the People must look, to know what is the form of their General Government, what are the several departments of that Government, what powers, authorities, and jurisdictions are delegated to each Department, what trusts are committed to and what duties and services are re-

quired from each department. The very existence of the Government, every department comprised in it, and every officer belonging to it, depends on that Constitution; the powers, authorities, and jurisdictions delegated to them, are such, and such only, as are plainly expressed in that Constitution; they have, and can have, no other. What is not plainly and unambiguously delegated in that Constitution, is not delegated at all: to claim it is usurpation; to exercise it is Tyranny. EDITOR'S REMARKS.

"The Constitution of the United States, and the Union, are one and the same thing: what the Union is, can only be seen in the Constitution: to support, protect, and defend the Constitution, is to support, protect, and defend the Union: to permit the wholesome limitations of the Constitution to be broken in upon, or a power to be exercised under its sanction which is not plainly conferred by it, is to weaken the bond of Union of these United States, to open the flood-gates of usurpation, and most culpably to stand by, inactive, while the fences against CONSOLIDATION, which our ancestors so anxiously built up, are gradually broken down. It is not by careless apathy, by reprehensible inactivity on the part of the several States, that the Union is to be preserved. To preserve the Union in its purity and utility, we must with jealous eyes, and anxious care, keep the Constitution of the United States, such as the Convention left it, pure and undefiled. We must do this, by persevering remonstrance against usurpation in theory, and uncompromising resistance to Tyranny in practice.

"And whereas a series of acts have been passed by Congress from the year 1816 to the year 1832, inclusive, laying high and increasing duties on the importation of manufactured goods from foreign parts, for the express and avowed purpose, not of raising a revenue to supply the wants of the national treasury, but of enabling the domestic manufacturers of similar articles, to command the monopoly of the home market, to compel the consumers of such articles to purchase from the home manufacturer at high prices what they could otherwise purchase from the foreign importer much cheaper, and to enrich the manufacturers at home, at the expense of all the other citizens of these United States, who are taxed and rendered tributary to this manufacturing monopoly: thereby erecting in the midst of this republican country of equal rights, a favoured and privileged class, for whose sake the commerce of the nation is burthened and impeded; the value of agricultural exports lessened; the expences of every citizen who needs manufactured articles of any kind, greatly increased; and the planting States impoverished, to swell the emoluments of the manufacturing States, by a system of taxation, partial, sectional, unjust, and to the State of South Carolina intolerably oppressive.

"It becomes important, therefore, to ascertain whether the Constitution of the United States has clearly and plainly conferred on Congress the authority of enacting a Tariff of protection in favour of domestic manufactures, by means of duties on the importation of foreign manufactures, expressly for this purpose, without reference to the wants of the treasury, or the increase of the revenue.

"On looking over that Constitution, there is no such power plainly and expressly granted to Congress. Power is given to regulate *Commerce*. But Commerce is one object of legislation, Manufacutures another, and Agriculture another. Wheat and Rice, and Tobacco and Cotton, are objects of Commerce; does it follow that Congress has a right, because they are so, to regulate agriculture as well as Commerce?

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"Nor can it be said that the expediency of laying protecting duties, and regulating manufactures as such, was not brought before the Convention of 1787, which drew up and enacted the present Constitution of the United States; on the contrary, that Convention had this very subject repeatedly brought to their view; and if they have not plainly and clearly delegated to Congress the power of protecting domestic manufactures, it is because they did not think it right to do so; but have given it under certain limitations, not to Congress, but to any State who shall apply for leave to lay duties on imported manufactures.

"This appears by article 1st, section 10, paragraph 2, of the Constitution; and is fully explained in p. 71 of the History of the proceedings of the Convention, by Luther Martin, one of the Delegates to that Convention from Maryland, in his letter to the Speaker of the House of Delegates of Maryland, published at the commencement of Mr. Yates' account of the Secret debates in the Convention: by which it will appear, that the power of protecting domestic manufactures could not be obtained for Congress, or in any other manner provided for than appears in the reference above made.

"The President of the United States, in conformity to a Resolution of Congress of March 27, 1818, caused to be published, "a Journal of the acts and proceedings of the Convention which formed the Constitution of the United States, from May 14 to Sept. 17, 1787."

"In that volume, the subject of imposts and duties on foreign importations, appears to have been brought before the Convention repeatedly, as may be seen by referring to pages 227, 294, 303, 359, 376, 380.

"On the 25th Aug, p. 294, the following proposition was referred to a committee of a member from each State, viz: "all duties, imposts, excises, prohibitions, and restraints, laid or made by the Legislature of the United States, shall be uniform and equal throughout the United States." That committee did not report as to "prohibitions and restraints," and the Constitution contains nothing on the subject.

"Aug. 18, p. 261. Motion to "establish public institutions, rewards, and immunities, for the promotion of agriculture, commerce, trades, and *manufactures*." Making the usual distinction between these separate objects of legislation. The committee refused to report in accordance with this motion, and the constitution contains nothing in conformity with it, but the power of granting patents.

"August 20th, p. 266. It was moved, that there should be "a Secretary of domestic affairs, who shall be appointed by the President and hold his office during pleasure. It shall be his duty to attend to matters of general police, the state of agriculture *and manufactures*, the opening of roads and navigations, and facilitating communications through the United States; and he shall from time to time recommend such measures and establishments as may tend to promote those objects."

"This motion also was rejected, for no report is made thereon, and the Constitution contains no provision in accordance with it.

"All these motions relating to import duties, to prohibitions and restraints on importation, to the protection, guardianship, and encouragement of manufactures, must have brought the very point in question repeatedly before the Convention. That Convention did not think it right to give any power over manufactures to Congress, although so repeatedly urged to confer such a power: they refused to confer it; and the Constitution finally reported does not contain it.

'The brief history and final result of all these attempts, is thus given by LUTHER MARTIN, Delegate from Maryland. "By this same section

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(art. 1, sect 10, paragraph 2,) every State is also prohibited from laying any imposts or duties on imports or exports, without permission of the General Government. It was urged, that as almost all sources of taxation were given to Congress, it would be but reasonable to leave the States the power of bringing revenue into their treasuries, by laying a duty on exports if they should think proper; which might be so light as not to injure or discourage industry, and yet might be productive of considerable revenue; also, that there might be cases in which it would be proper for the purpose of *encouraging Manufactures*, to lay duties to prohibit the export of raw materials, and even in addition to the duties laid by Congress on imports for the sake of *Revenue*, to lay a duty to discourage the importation of particular articles into a State, or to enable *the Manufacturer here* to supply us on as good terms as they could be obtained from a foreign market: however, the most we could obtain was, that this power might be exercised *by the States* by and with the consent of Congress, and subject to its controul."

"This alludes to the following provision in the Constitution of the United States, which may be produced as absolutely conclusive of the question.

"If the framers of our Constitution did legislate at their meeting on the subject of protecting duties in favor of home industry, and domestic manufactures, then all the questions and considerations which are plainly and obviously connected with the subject, and which would have occurred to every body, must have occurred to them: and if among the various regulations they had to consider, they deliberately adopted one, and *enacted that alone*, it follows that they deliberately rejected all the rest.

"By article first, section tenth, paragraph second, it is enacted, that *no State shall without the consent of Congress, lay any duties on exports or imports*. Therefore, any state may lay such duties on exports or imports, by applying to Congress for the consent of that body. The framers of our Constitution, therefore, after deliberation, have allowed to the states the power of laying protecting duties, if on the application of any state for that purpose Congress should give its consent. This power of laying protecting duties in the first instance, is not given to Congress; it is not to be found among the enumerated or expressly delegated powers sanctioned by the Convention. In debating this question, *it must have occurred to the Convention*, " shall we give this power to Congress, or shall we give it to the States?" They rejected it as to Congress, and they gave it to the States, under the limitations of the paragraph above quoted. How then can Congress claim it for itself? Why do not the States that advocate a protecting Tariff, *apply to Congress for permission* to lay duties on imports, and try the experiment among themselves, at their own risk, and not at the risk of those States that object to a Tariff? Because the manufacturing monopoly states are enriched by taxing the south, and would be impoverished by taxing themselves. Fraud and usurpation form the basis of the whole protecting system. The Tariff states know this, and Congress knows it. But a northern majority having succeeded in imposing a tribute on southern industry, for the benefit of the north, will never give up their claim to this tribute, while they can command a Congress-majority to support it. They apply triumphantly their favorite maxim, that the power of a majority is uncontrolable, and the minority must submit to it.

"Hence it appears, that the convention refused to confer this power in any other manner, than on such individual States as might chose to ap-

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ply for licence to exercise it within their own boundary. A licence, to which this present Convention has no objection whatever, provided the states who approve of the protecting policy, will be content to apply it to their own importations, without forcing those states to follow their example, who disapprove of that policy.

"From this undeniable appeal to facts, and historical documents of acknowledged authority, it appears beyond all reasonable doubt:

"1. That proposals to confer on the Legislature of the Union the power of laying duties on foreign importation with a view of protecting domestic manufactures, were repeatedly within the purview of the Convention of 1787.

"2. That all these proposals were rejected, inasmuch as no committee appears at any time to have reported in favour of this policy: and the Constitution finally proposed and adopted, contains no such power conferred on Congress.

"3. That the Convention left it to be put in force by any individual state who might think fit to apply for a licence to do so, provided the proceeds of the duty were paid into the Revenue fund of the Treasury of the United States.

"4. That no object or purpose in laying duties on imported goods, is sanctioned by that Convention or the Constitution they enacted, but the *Revenue* necessary to pay the debts of the Union, and defray the necessary expences of the Government.

"5. That the laws from time to time enacted by Congress from 1816 inclusive to the present time, imposing duties on the importation of manufactured articles from foreign parts, with a view of protecting and fostering the manufacture of similar articles at home, are laws not authorized by the Constitution of the United States; and Congress, in passing them, has exceeded the authority conferred on that body by the Constitution. These laws, therefore, enacted by void and incompetent authority, are acts of usurpation; and not being santioned by the Constitution, are not entitled to the respect and obedience of the citizens of the United States.

"6. All powers not specifically enumerated and expressly delegated to Congress, belong not to Congress, but are reserved to the states. The power of laying a protecting or prohibitory Tariff, or any other tax not really and honestly intended for the purposes of Revenue, is no where to be found among the enumerated and expressly delegated powers conferred upon Congress. It is therefore among the reserved powers of the states, and belongs not to Congress.

"The Legislature of South Carolina, observing the despotic career that the Congress of the United States seemed bent on pursuing in this respect, and deeply feeling the oppressive and injurious operation of the Tariff laws thus enacted, on the prosperity of our own State—in conformity to their oath to protect and support the Constitution of the United States, have, at various times, particularly from the year 1823–1824, protested, remonstrated, and memorialized Congress, in the most earnest and respectful manner, to desist from a system of taxation whose manifest operation was to render the agricultural States of the South the mere Colonies and Tributaries of the Manufacturing States north of the Potomac—to place the construction of the Constitution exclusively in the power of a Congress-majority—to prostrate all the fences by which the constitutional rights of a minority were protected—to set at defiance all opposition to constitutional usurpation—to annihilate all the reserved

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rights of the States, and convert this Government into one consolidated despotism; as indeed the case now is."

Secondly, As to the *injustice* of a protecting Tariff; by which the consumer is compelled, under the pretence of general welfare, to pay a higher price for the same article to a manufacturer at home, then he can purchase it for from a manufacturer abroad. This is manifestly taxing one class of citizens for the emolument of another. It is a tribute; for the citizen thus taxed, receives no equivalent; nor does this tax go into the treasury, for the consumer generally purchases in preference the domestic article; and the tax is in fact paid to the manufacturer as part of the price of the article sold. The revenue receives no part of the duty where the foreign article is not purchased. Such a Tariff of protection operates, and was meant to operate, as a tax levied on the European importations of the South, for the benefit of Northern manufacturing speculators; whose speculations would not yield the usual profit if the monopoly was not sustained by thus taxing the South. About two-thirds of our whole export consists of articles the production of southern industry. No wonder the towns and cities of the North are so superior in wealth and embellishment to those of the South, for, it is the money of the South in factorage, agency, and tributary taxation, that pays for this superiority. The South is a sponge, collecting wealth by her planting industry, and when full, squeezed for the benefit of the North: the majority in Congress is the screw press, employed for the purpose. It is not true that we discourage American industry by laying out our money to more advantage with foreigners, than by expending it at home. If I offer for sale to a foreigner, a bushel of wheat, a hat, a quantity of tobacco, rice, or cotton, each worth a dollar—or a silver dollar, which I have already purchased in Mexico for some article of North-American produce—and the foreigner pays me an equivalent, in some article that I stand in need of; he encourages my industry, exactly as much as I encourage his. He buys a dollar's worth of labor from me, and I buy as much from him.

What can be more unjust in a government professing equality, than giving a monopoly of the home market to one part of the community, by preventing and prohibiting another portion of the citizens from laying out their earnings to more advantage elsewhere? Doing this, under a penalty, levied in the form of a tax on every foreign commodity? The manufacturers are few; one in one hundred thousand at the most; the consumers are many. The manufacturers are a class, the consumers are the nation. The protecting duty creates a monopoly in favor of the few, at the expense of the many. Nor, in fact, is the impost so laid, a *tax* devoted to the treasury and applied to the wants of the whole country: the revenue is not benefited one cent by the extra price paid by the consumer to the manufacturer. It is not a tax, for the treasury does not receive it; it is *a tribute*, levied on the industry of the South to increase the gains and emoluments of the North. A tribute it is, for the South receives no equivalent in return.

For the purpose of defending this measure, it became necessary to advance the principle that every government is, and of necessity must be, *the government of the majority*. That the majority had the exclusive right of judging of the general welfare, and of giving its own construction to the Constitution. The rights of the minority and the limitations of power prescribed by the Constitution, were, by this pretension, annihilated. An absolute despotism was thus introduced; and even to this day, (1836,) continues, to which the minority is compelled to submit; the smaller body is overwhelmed; it is voted

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down; its voice is disregarded; its rights and claims are trampled on; and as the majority of congressional votes belonged, and still belongs, to the states who claim the right of imposing protecting duties, that is, the northern section of the Union, the South was doomed to be their colonists and their tributaries. South Carolina first felt the gross injustice of this state of things, and while other states of the South were content with using remonstrance and complaint, she alone openly resisted this organized plan of robbery; she alone revolted from this depotism of a Congress-majority, and refused obedience to a system of laws passed in open defiance of the Constitution. Hence arose the series of proceedings now about to be recorded, which form the most prominent, as well as the most honorable part, of the legislative history of South Carolina.

Nor is it true that this Tariff protection of home manufacture can be defended under the power given *to regulate commerce.* Commerce is the intercourse of exchange between foreign nations. The sole object of the Tariff of protection, is to guard the home producer against this intercourse of exchange; to prohibit and annihilate Commerce, lest the cheap article imported should interfere with the dear article produced at home. Can you annihilate and destroy Commerce under the pretence of regulating it? The object of every reasonable regulation is to foster and extend on fair principles of mutual reciprocity. The object of this Tariff is not Commerce at all; it is manufactures that are to be regulated. Commerce stands in the way of a monopoly profit, and is therefore to be swept away; we are to adopt the Chinese policy of insulation, and are driven by regulation from every market but the worst.

Thirdly, a prohibitory and protecting Tariff, is also, at all times and every where, on general principles, as unwise and inexpedient, as in the present case it is unconstitutional and unjust.

For, the universal experience of prudent people teaches them to buy what they stand in need of, at the best market and at the cheapest rate.—The less amount of a man's labour he gives for the articles he wishes to purchase, the more remains to be laid out in other articles he may want.—If I can procure an article from a foreigner for one day's labour, and my next door neighbour asks two day's labour for an article of the same kind and quality, is it not manifest that I am robbed of one day's labour, if I am *compelled* to buy of my next neighbor instead of the foreigner? Is it the way to enrich a community, to compel every consumer to pay two prices to a *domestic* manufacturer, instead of one price to a *foreign* manufacturer? It is paying, not for a thing, but a name. This may enable the home manufacturer to obtain a reasonable profit on an article that he would otherwise lose by, and which he ought to have let alone; but it is not a sufficient reason why I should be compelled out of my own earnings to make his losing concern a gaining one. This is not all: suppose ten neighbours have a dollar and a half each to lay out with each other, and each wants an article that they can import for a dollar, but a protecting tariff compels them to pay a dollar and a half for it to the home manufacturer—is it not manifest, that five dollars surplus, which might have been laid out with each other, are abstracted from their pockets and forced into the pocket of the protected favourite? So that the evil does not fall exclusively on the individual purchaser, but on some of his neighbours also, with whom he might have laid out the half dollar of which he is thus legally robbed.

What words can add force to the axiom, that it is the interest of every one to resort to that market where he can be supplied best and cheapest? This is the dictate of uniform experience and common sense. A protecting tariff says no; it is the interest of the whole community that each pur-

chaser should be confined to that market, where inferior goods are sold at the highest prices. Let me have choice of markets, says the purchaser, that I may find out where I can be best suited: no, says the Tariff Law, you shall have but one market, the market at home. For what reason do you lay this restriction, says the purchaser? Because, says the legislator, our man lives on our side of the river, and you have no right to lay out your money with one who lives on the other side. Is this the dictate of common sense? Yet such is the wisdom of what is called the *American System*, which would be equally applicable to the prudence of making Madeira wine from hot-house grapes in the province of Maine. It is most melancholy to reflect, that the strong and cultivated intellect of the representatives of the north eastern states, should be selfishly employed in defending paradoxes so completely discarded throughout the whole of enlightened Europe: and they know it to be so.

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Moreover, the bond that is destined to unite in one system of peaceable intercourse the whole family of Man, is Commerce. Commerce founded on the mutual supply of mutual wants, and the mutual communication of useful customs, usages, discoveries and improvements. Commerce that teaches us to promote the welfare and prosperity of every nation with whom we interchange commodities, because the greater their welfare and prosperity, the more valuable are they to us, as friends and customers.—Wealth is not to be acquired by dealing with a population that cannot afford to purchase, and has nothing to sell; or by making war upon our customers, destroying their resources, annihilating their means of interchange, and inducing general distress and national poverty. No; the motto of Commerce is, peace on earth and good will toward man. We do not gather grapes from thorns, or figs from thistles, or wealth from poverty.—The merchant knows this.

The very essence, the basis on which all commerce is built, is the introduction of commodities that are wanted, *from places where they are cheap and plentiful*, into places where they are scarce and dear; thus equalizing the productions of various climates, and meeting every want, with its appropriate supply, at a reasonable expense.

The very essence, the basis on which a prohibiting and protecting Tariff is built, is, to forbid the introduction of foreign commodities, *because they are cheap*. To protect all home consumption, that cannot stand against foreign competition without such protection, and to compel the home consumer to waste his labour and his earnings in purchasing at exorbitant prices from the home producer, what commerce could supply at a cheap and reasonable rate. A protecting Tariff and foreign Commerce are Antipodes to each other. You cannot cherish both of them. Commerce furnishes the consumer with a plentiful and cheap market, and variety of choice. A Tariff presents for our approbation an extravagant market of limited supply. Commerce diminishes your purse as little as possible; a Tariff of prohibition and protection, as much as possible. Commerce furnishes an equivalent for the price demanded; a Tariff swallows up your earnings without giving an equivalent. Commerce supplies you with the market of the world; a Tariff confines you to the monopoly market at home.

But it is said we protect an infant manufacture that promises great future importance when the protecting duty may be removed—a period that is coeval with the Greek calends. When, and where, did a manufacturer ever allow that a protecting duty was no longer necessary? Surely not in the United States. Look at the history of the Tariff of 1816. These hot-bed productions are not calculated for permanent maturity, if the protection be

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withdrawn. Of promises and prophecies the manufacturer will furnish a plentiful supply; but no manufacture ever succeeded by means of a Tariff, that might not have succeeded without it. Nor have we a right to compel the present generation to pay for the expectations, as yet unrealized, of a distant posterity. We impose a tax in support of our own credulity.

Hence it is manifest, that exactly in proportion as we throw obstacles in the way of introducing foreign commodities, we destroy commerce. In the same proportion exactly, we discourage and repress the production of all those commodities, the produce of domestic industry, which furnish the materials of *Export*; for if we discourage and repress Importation, we need not export what foreigners cannot pay for. Commerce is the mutual interchange of commodities: labour for labour; and if we refuse to buy from the foreigner, the foreigner will refuse to buy from us. The American system is acknowledged and avowed by its advocates, to embrace every possible production that can be raised or manufactured at home. Hence it contemplates the gradual exclusion of every imported commodity, and the total annihilation of all commerce; destroying at one fell sweep, the whole domestic industry of export, every vessel employed in exportation, every sailor hired to navigate our mercantile navy, and every trade, and every workman, to whom that navy gives employment. And this is called protecting domestic industry! The infatuation of the merchants on this question, (Boston excepted,) has excited the utmost astonishment; for they have tamely witnessed the progress of a plan that contemplates their utter destruction. But the determination to make the South the colonist and tributary of the North, has been pursued with an insane perseverance, that is not even yet extinct. And if it has not yet fully succeeded, to the bold and strenuous opposition of South Carolina alone, must that want of success be imputed. The nullification of the Force-Bill, has placed that state on a proud pre-eminence.

Many other considerations and arguments bearing against the policy of a protecting Tariff, will be found in the series of records which this brief essay is intended to introduce and illustrate. The editor is of opinion, that if they are carefully perused, the reader will come to the same conclusion, that Joel Barlow first suggested, which Dr. Channing has lately avowed, and the European Economists now advocate, that all mysterious and concealed taxation is a disgrace to the Government that employs it, and to the nation that permits it. That every Tariff is essentially founded on deception, and every custom house a proof of ignorance in the people, and their willingness to be duped and cheated. Nor can Liberty be expected to flourish in that community, which encourages the government in exclaiming *Si populus vult decipi decipiatur.*

If commerce with a part of the world is desirable, commerce with the whole world is more so. Raise your taxes within yourselves, and the cheapness of every article your merchants can supply, will remunerate you ten times over. What right have you to expect honesty in your public servants in other particulars, when you encourage them in the dishonesty of Tariff taxation? Commerce flourishes by extending the blessings of mutual intercourse—not by contriving how we shall most effectually defalcate our neighbour's gains. The abolition of all duties on import, is an event, in the opinion of the Editor, fervently and devoutly to be wished: an opinion which he is well persuaded is the prevailing sentiment at this moment, of every political economist throughout Great Britain, where that science is more profoundly, more extensively, and more successfully cultivated than elsewhere. We are beginning to see

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the advantage in our own country of moving in the same useful and honourable course of investigation.

There are certain phrases used in these documents, then, and now, well understood, whose meaning time may render ambiguous.

Consolidation. The merging and absorbing the separate State Governments into one great, central, indivisible, national Government; as emanating from the whole people: in contradistinction to our present federal government of *United* STATES. This seems to have been the aim of many politicians among us, about the time of the Convention in 1787. They were defeated in the Convention by their opponents of the states or *federal* party. The friends of consolidation were *nationalists.* After the publication of the work called the "*Federalist,*" the joint production of Messrs. Madison, Hamilton, and Jay, the national party assumed the name of *Federalists*; by which they were afterwards designated in party warfare, until the accession of General Jackson; since that time, names and parties have been strangely intermingled, modified, and confused. The object of the *modern* Federal (or national) party, was a single government, with full power of controul over the separate states, and the people, with great revenues, extensive patronage, and an imposing character of power and resources in the eyes of Europe. To effect this, the central government at Washington must be considered as the *national* government, paramount, predominant, and uncontroulable; the states must be sunk into municipalities, and the constitution of 1787 explained away by construction and implication, or boldly set at nought by open usurpation. All these means and measures have been resorted to; and in fact, they form the subjects of remonstrance and complaint in the documents that follow. Many good and able men have arranged themselves on each side of this great party distinction. But a Carolinian must stand by the doctrines and decisions of his own State, as the legislatures and conventions have deliberately propounded them.

STATES-RIGHTS: not state rights, which are the rights appertaining to a particular State. States-Rights, are—1. The rights of Sovereignty and Independence; see "Federalist" Nos. 28, 31—the rights appertaining to the confederated States of the American Union, as sovereign and independent communities, and which have never been conceded by those States to Congress. Congress, under the constitution of 1787, and its amendments, can exercise no rights or powers, but such as are expressly enumerated and delegated, or that necessarily and unavoidably flow from those that are.

Every other right and power is reserved by, and remains vested in the States; to be delegated or not, hereafter, as the states may see fit.

The attempt of the now-called federal party, from the time of Alexander Hamilton, to the present day; an attempt that began in the Convention, and is now the prevailing aim of the controuling majority, was to establish a great central Government, in which the separate States should be merged as subordinate municipalities. A Government, not consisting of confederated, independent, and Sovereign States, but of an indivisible consolidated character, to which the several states owe allegiance and submission. Hence the denial of the right of Secession, and the attempt to coerce by force, our own State of South Carolina.

The powers actually conferred on Congress are to be found enumerated in, and delegated by, the constitution: the reserved rights of the States are not to be sought for in that instrument, because they are reserved out of it. See the 11th and 12th amendments to the constitution.

NULLIFICATION. To nullify: to annul: to make void.

The Kentucky resolutions, (on the Alien and Sedition Laws,) of Thurs-

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day, November 14, 1799, now known to have been drawn up by Thomas Jefferson, as appears by the letter of Warren Davis, Esq. Richmond, March 8th, 1832, in the Richmond Enquirer of March 18, republished in a collection of documents, by Jonathan Elliot, of Washington—contains the following passage, viz:

That if those who administer the General Government, be permitted to transgress the limits fixed by that compact, (the Constitution) by a total disregard to the special delegations of power therein contained, an annihilation of the State governments, and a creation upon their ruins, of a general consolidated government, will be the inevitable consequence.

That the principle and construction contended for, by sundry of the State legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stops nothing short of DESPOTISM; *since the discretion of those who administer the government, and not the constitution, would be the measure of their powers.*

That the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of the infraction: and that a NULLIFICATION *by those sovereignties, of all unauthorized acts done under colour of that instrument, is the rightful remedy.*

This is in full conformity to the doctrine laid down in the *Federalist*, Nos. 28, 78: to the third resolution of the Virginia Legislature, on the Alien and Sedition Laws, drawn up by Mr. Madison, January 21, 1798; to the opinions of Chief Justice Parsons, of Massachusetts, Gov. McKean, and Chief Justice Tighlman, in the case of Olmstead; and to the decisive assemblage of precedents and opinions, collected in the *genuine book of Nullification, by Hampden:* (Mr. Cruger) Charleston, 1831. That book shews beyond all contradiction, that the remedy of nullification against the usurpations of Congress, has been adopted and practiced, openly, avowedly, decidedly, undeniably, by Maine, Massachusetts, Connecticut, Pennsylvania, Ohio, Georgia, Alabama, as well as by South Carolina. So that it is very difficult to account for the present outcry against that doctrine from any motives of fact, argument, or honest intention. That it should be regarded as rank heresy, by an encroaching Congress, and a despotic administration, is natural and desirable. I refer to that book of Mr. Cruger, as absolutely unanswerable.

Nullification is a term well known in English Jurisprudence; it is a subject that occupies a great part of a volume, in Bentham's treatise on Judicial evidence; nor indeed, could better authority be produced in its favour, than Mr. Jefferson's own.

A nullifier is of opinion, that any and every law passed by competent authority, whether it be wise or unwise, ought to be obeyed. That any and every law passed by incompetent authority, be it wise or unwise, is null and void; and ought not to be obeyed. It is every man's duty not to encourage and connive at, but resist usurpation.

The legislative, executive, and judicial departments of our federal government, constitute a corporation. They are agencies, appointed to put in execution the form of government, devised by the convention, and delineated in the constitution. The powers, authorities, and jurisdictions they are entitled to execute, are such as the constitution confers on them, and no other. By that instrument, they were created; by that instrument, they are limited; and beyond it they are not known.

The universal law of all Mandates, Commissions, Powers, and Authorities, given or committed by a Principal to an Agent, is, that all acts done by the Agent, conformably to the powers entrusted to him in

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his commission, are valid and binding on his Principal: all acts done by the Agent not authorized by the commission under which he acts, are null and void. Thus, by the civil law as laid down in Justinian's Institutes, an elementary work, Lib. 3, tit. 27, sect. 8, *De executione Mandati*, "He who executes a commission must not exceed the bounds "thereof. Thus, if a person should commission you to purchase lands, "or become security for *Titius*, to the amount of a hundred pieces of "gold, you may not become bound for a greater sum, or purchase the "lands at a higher price."

To like purpose the Civil Law in Dig. 17, 1, 5, 2. So in the English and our own law, "an agent constituted with limited and circumscribed powers, cannot bind the principal by any act in which he exceeds his authority." See Livermore on Agency, v. i, p. 108, 3 Term Rep. 757. 1 Espin. Rep. 111, 5 Term Rep. 567. Nor does the Law allow of *Implication or Construction*, 5 Johnson's N. Y. Rep. 58. "By the court: the plaintiff was "not to know or infer any authority beyond what was given: and if the "agent exceed that authority, his principals are not bound. A power to "sell, does not of itself convey a power to warrant the title."

The *principle* of decision is the same, whether the object be great or small, of more or less moment or value. The rights and powers delegated to the Congress of the United States, are rights and powers not deduced from construction or implication, but *enumerated* rights. Such is the expression in the 11th amendment. The 12th amendment declares that these rights and powers are *delegated*; and that such as are not enumerated and delegated, still belong to the states, or the people, and are reserved, not surrendered.

The delegation of rights and powers to act in some certain manner, for some certain purpose, constitutes an Agency (*Mandatum.*) The Delegator is the principal (*Mandator:*) the person to whom the delegation is made, is the *Mandatory*. There exists no other description or definition of Principal and Agent. By the universal Law of Principal and Agent, every act of Congress which is not *clearly* authorized by the Constitution, which alone points out and contains the enumerated and delegated powers, is of itself an *ipso facto*, null and void; not binding on the principals or any of them. If there be any such thing as legal principal in force any where, this position is universal and undeniable. Who are the Principals? The States who created the Convention; who created each and every department of the federal government, describing and limiting their duties and powers, and who may disorganize and destroy, or alter and modify the federal government by any new Convention. To nullify, then, is a mere declaration of a legal fact: it is a refusal to confirm the unauthorised act of an agent who has exceeded his power and commission. It is a refusal to obey a law which is in itself no law, but null and void, because it is not based upon any constitutional authority. The oath to support the Constitution, binds us to obey and confirm what is done or enacted agreeably to its tenor and jurisdiction; and it equally binds us to refuse obedience to what is not done or enacted within its tenor and jurisdiction; otherwise we sanction usurpation. Nor can the reserved rights claimed by any individual state, be submitted to the decisions of *the Supreme Court of the United States.*

"*First.* Because it has no power but what is given to it by the second section of the third act of the Constitution, which does not contain the power of deciding a question of jurisdiction, or of State Sovereignty, or any other question, *where a State and the United States are the contending parties:* none such is there enumerated

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"*Secondly.* No Sovereign power can submit the question of its own Sovereignty to a delegated, derivative, subordinate court, instituted to decide municipal questions. No principal can permit his agent to decide whether he is principal or not. No tenant can impeach his Landlord's title.

"*Thirdly.* No party can be compelled to submit a question to a tribunal nominated and appointed by the other party; and where some of the judges have already decided the question before it can come before them. This is the case with Judge Johnson and Judge Baldwin.

"*Fourthly.* The fraud of Congress in the caption of the law, prevents the question of constitutionality from coming before the court. The law of 1824, (as well as that of 1828) appears on the face of it as a revenue law, when it is in reality a law intended solely to protect manufacturers, and was not intended for revenue. Mr. Todd, afterwards Chairman of the Committee of manufactures, in arguing in favor of the Tariff, on Feb. 10, 1824, said, "they cry, you cut off importation—you ruin trade! why, "this is the very object of the Tariff: to check the importation of foreign "goods, and give the manufacture of the articles now imported, to our "own workmen:" on another occasion, as Chairman of the Committee, he declared openly in the House of Representatives, that the revenue needed no addition, for there was a surplus of 9 millions in the treasury, and the law he proposed (and which was afterwards carried) was solely intended to give the manufacturer the monopoly of the home market for articles now imported. None of this can be stated or appear before the federal judiciary. They profess to decide only on the face of the record.

"*Fifthly.* The federal judiciary was appointed to decide suits in law and equity—civil and municipal, not POLITICAL questions, or difficulties relating to State Sovereignties. These high questions must be decided by the several States, and the United States, for themselves, and by themselves, not by a court consisting of technical lawyers: unless a Convention be called.

"*Sixthly.* This is a question whether the right claimed by Congress is one of the *enumerated* or the *reserved* rights: can we submit a reserved right to this subordinate tribunal? They belong to ourselves to decide on, and no one else, at our own risk: unless a Convention of the States be determined on to say whether Congress has this contested power of laying protecting duties in favor of home monopolists. Let such a Convention be called as it ought to be, and we shall be contented. We ask for that tribunal, and will submit to no other, for it is the constitutional mode of deciding this question. The Constitution embraces and enumerates not one of our reserved rights: how then can the derivative subordinate agent, the creature of the Constitution, decide a question with which the Constitution has nothing to do?"

Nor can Congress give any power to the federal judiciary (as it has attempted to do by the 25th clause of the Judiciary Act) but what is enumerated in the Constitution where this agency is erected, to wit, Art. 3, Sect. 2. It is impossible to get over the reasoning of Warren Davis, in his able report on this subject. The power of the federal judiciary is derived, not from the act of Congress, but from the Constitution; an act of Congress cannot confer what the Constitution has refused. See the case of Harcourt *v.* Fox, in Showers' Reports.

If a series of usurpations all tending to convert a confederated into a consolidated Government, and to destroy the sovereignty and independence of the separate States, should threaten success, it will become the

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interest and the duty of any State, after ineffectual remonstrance to the general government, to SECEDE from an Union thus perverted.

The right of secession is so well argued by Judge Tucker of Virginia, in his notes to Blackstone's Commentaries, Vol. 1, that it suffices to refer to that well known publication. In fact, our own revolution can be no otherwise defended. But it seems to be the doctrine of the present administration, that secession is to be prevented by COERCION. Force and Violence, War and Punishment, are now the favorite instruments for convincing the understanding, where a State presumes to doubt the constitutionality of the acts of the Government at Washington. South Carolina by nullifying that legislative infamy, THE FORCE BILL, has made her reply to this most insolent threat.

On this subject of coercion, I refer the reader to the Speech of that able man, *Robert J. Turnbull*, at Charleston, on the 4th July, 1831, page 49. He there shows from the Journal of the Convention, that an attempt was made, first by Governor Randolph, and afterwards by Mr. Patterson, (Journ. 68, 126) to enable Congress or the Federal Executive, to call forth the force of the Union against any State opposing an act of Congress. This proposal was promptly rejected, and never afterwards renewed. The remedy left to Congress is the constitutional call of a Convention, to which South Carolina would readily accede. We seek no hostilities. If our opponents force them upon us, the resulting evils must be imputed to themselves alone.

ALLEGIANCE: Is the paramount submission due by the citizen to the Constitution and Government of the State to which he belongs. In this country we have a double government, viz: that of the State, and that of the United States. The latter is subsequent in point of time; derivative and subordinate in its creation and character; and limited in its objects and its authority. It was created by the existing separate States, for special purposes of foreign, not of domestic relations, and with confined and special powers adapted to those purposes. It has a controuling power, so far as the confederated states have chosen to confer that power, and no farther. All the powers conferred on it, can be modified or repealed by any future Convention of the States. It is manifestly an agency, appointed to put in execution the limited authority conferred on it by the Constitution; no other and no more. To this derivative, limited and subordinate government, the citizens of the various States owe obedience, because their own state, as party to this confederation, enjoins it: but allegiance is a term applicable only to that submission which we owe to our own *Sovereign State;* which was such before the federal government was created; which is so still; and which will be such when the federal government is altered or dissolved.

This is undoubtedly the doctrine of South Carolina, distinctly expressed in the Ordinance of the Convention nullifying the *Force Bill.* It is corroborated by the two acts of 1777 and 1778, enforcing an oath of allegiance and fidelity, already inserted. The opinion delivered by the majority of the Bench of the Court of Appeals, in *the State ex relatione McCready v. Hunt,* and *ex relatione Daniell v. Mc Meekin,* 2 *Hill's Rep.* 1, did not meet with the approbation of the great majority of the citizens of South Carolina. The public dissatisfaction produced a re-organization of the Court of Appeals in the Session of the Legislature of December, 1835.— The construction deliberately given in several reported cases* to the Uni-

*The decisions and dicta of the Supreme Court of the United States that countenance the doctrine of consolidation, are (inter alia) Martin v. Hunter's Lessee, 1 Wheat. 324: McCulloch v. Maryland, 4 Wheat. 403: Anderson v. Dunn, 6 Wheat. 225.

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ted States' Constitution, by the decisions of the federal judiciary, adopted and sedulously dispersed by the various commentaries of Judge Story, and the northern Jurists generally, lead so directly to the consolidation of our federative into a great central government, one and indivisible—in all respects of paramount authority—to which the sovereignty and independence of the individual states must give way as subordinate institutions—that the liberties of the people have been, and still are in manifest danger; and we are placed by this combination of northern authorities on the direct road of Despotism.

The reason is manifest. These northern doctrines lead to the omnipotence of a federal majority, by which the rights of a minority are construed away whenever it suits that majority to adopt their own convenient construction: and that majority has been, is, and is likely to be for years to come, *a northern majority*. If a citizen of this State be asked, "are you an American?" His reply ought to be, "Sir, I am a South Carolinian."

The power of a majority. The northern doctrine is, that from the very nature of all government, the will of the majority must be regarded as predominant. For it is absurd to say that we must be governed by the will of a minority.

The reply is, that the confederated States have not agreed to be governed by an uncontrolable majority; they are to be governed according to the terms of their common compact, to wit, the Constitution of the United States. By that compact, certain powers and authorities are enumerated and expressly delegated, by which a Congress-majority is limited and bound. All powers and authorities not expressly delegated and enumerated, are withheld from Congress, and reserved to and by the States that entered into that contract; as appears by the 11th and 12th amendments of that constitution. The majority, therefore, must govern, not according to their own discretion, but according to the powers given to them in the Constitution, and in no other manner. Even the Omnipotence of the British Parliament is controuled by certain acknowledged constitutional limitations, which are habitually referred to, as undeniably binding.

The general Welfare. It is urged by the prevailing and dominant party, that the Constitution contemplates *the general welfare* as the polar star of all legislation. That whatever, therefore, is required by the general welfare, the majority may, and ought to enact. And as the majority alone can decide what measure is or is not conformable with the general welfare, and required by it, the enactments of the majority are of necessity binding on the minority, and on the States and people. This is the favorite doctrine, very positively delivered, of Mr. President John Q. Adams. To this it is replied, that the Constitution marks out and describes how, and under what enumerated powers and authorities, the general welfare is to be consulted and pursued. The pretence of enacting whatever the general

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The Constitution gives power to the federal judiciary to take cognizance of cases in law and equity, but not political cases: casus federis.

It gives them no jurisdiction whatever, in the case of a State against the U. States, or vice versa. Examine the article in the Constitution conferring and enumerating judiciary powers.

It is not to be expected, that a court composed of technical lawyers, can be fully competent to the decision of great questions of State, that legislators and statesmen are peculiarly appointed to decide. A great lawyer is one thing; a great statesman another. Their modes of considering questions are different. It is a farce, to expect perfect impartiality of decision in questions between the people and the executive, from Judges nominated, and in fact appointed by the executive, from a desire of rewarding a political partizan, or gaining a political adherent, in an influential situation. In the case of the Tariff, Judge Johnson of Charleston and Judge Baldwin of Pittsburgh, were openly committed in favour of the executive measure. Is not Chief Justice Taney notoriously liable to the same objection?

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welfare may require, and of judging of the measure proposed, without regard to the limitations of the Constitution, is neither more nor less than despotism. It is treating the Constitution as useless and worthless; a mere dead letter. Under such an assumption of power by a Congress majority, the minority has no rights, the States no sovereignty or independence, and the people no liberty or property. No act of despotism can be imagined which a majority with unlimited discretion to pronounce on the general welfare, may not ordain and perpetrate. A constitution of limited powers, is a mockery under the modern pretence of general welfare.

This question, so far as good sense could settle it, was settled by the report of the Virginia minority on the Alien and Sedition Laws, drawn up by Mr. Madison in 1799, as follows:

"The true and fair construction of this expression (the general welfare) "both in the original and existing federal compacts, appears to the Com- "mittee too obvious to be mistaken. In both, (viz. the old articles of con- "federation and the present Constitution) is subjoined to this authority, an "enumeration of the cases to which their powers shall extend. *Money*, "cannot be applied to the *general welfare*, otherwise than by an application "of it to some *particular measure* conducive to the general welfare.— "Whenever, therefore, money has been raised by the general authority, "and is to be applied to a particular measure, a question arises, whether "the particular measure be among the enumerated authorities vested in "Congress. If it be, the money required for it, may be applied to it.— "If it be not, no such application can be made. This fair and obvious in- "terpretation, coincides with, and is enforced by the clause in the consti- "tution which declares that *no money shall be drawn from the Treasury but "in consequence of appropriations by law.* An appropriation of money to the "general welfare, would be deemed rather a mockery than an observance "of this constitutional objection.

"Whether the exposition of the phrase here combated, would not by "degrees *consolidate* the States into one sovereignty, is a question concern- "ing which the Committee can perceive little room for difference of opin- "ion. To consolidate the States into one sovereignty, nothing more can "be wanted than to supercede their respective sovereignties in the cases "reserved to them, by extending the Sovereignty of the United States to "all cases of the *general welfare;* that is to say, to all cases whatsoever."

So far Mr. Madison. Human ingenuity cannot devise a principle of despotic government more perfect, than the uncontrouled omnipotence of a majority—and a discretionary construction of the *General Welfare* as the guiding rule by which a majority may regulate its conduct.

Internal Improvements. This is one of the measures justified on the principle of promoting the general welfare. The objection to this measure is, that though brought forward in the Convention, the Constitution does not authorize it. The plan of internal improvement introduced under Mr. J. Q. Adams's sanction, was intended to absorb all increase of revenue, and to prevent any surplus; so that no argument should be drawn from the flourishing condition of the Treasury, to lessen or discontinue the Tariff. By degrees it became what it still is, a scramble among the States, which should obtain for internal improvements the greatest amount of the public money. The appropriations under this head, were and still are, squandered with merciless dissipation, for objects trifling in themselves, and of mere local utility. This system threatens an impoverishment of the Treasury, and a dissipation of the public resources, that ought to alarm even its advocates. How the progress of this demoralizing evil is to be

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stoped, who can tell? Thank heaven, South Carolina has permitted herself to be plundered, scorning to join in the general scramble.

The system of internal improvements commenced in 1817, with the appropriations for the *Cumberland Road*, (from Cumberland in Maryland, to the Ohio,) which has required and received, and still does claim annual sums from Congress for its completion and repair. This road may be very useful to the country through which it passes: but of what use is it to Maine or Vermont, or South Carolina, or Georgia? And why are we to pay the expense of constructing and repairing it? A line of canals from Massachusetts to New Orleans, parallel to the Atlantic coast, or a public road from the British border to the Spanish border, would be a proposal intelligible on the score of public utility, if the object were worth a tenth part of the necessary expenditure; but the major part of the schemes for internal improvements, (nine out of ten of them,) are useful to the State alone which has been successful in robbing the public treasury to enrich herself. I refer to the Speech of Judge Wm. Smith, of the Senate, 11 Ap. 1828, full of sound reasoning and instructive detail. Since that time, it might be worth while to enquire of what use to the South are the Breakwater of the Delaware, or the proposed improvements of the Hudson? Are not the States of Pennsylvania and New-York—States overflowing with wealth—able to pay for their own internal improvements? Did South Carolina apply to Congress?

The whole history of internal improvements, from the Bonus Bill of 1817 to the present day, exhibits a series of profligate expenditure on the part of the Government, of fraudulent draughts on the public treasury for objects merely local, of selfish scrambling among the individual States, who shall best succeed in exhausting the revenue—degrading to the last degree to the American character. We have not yet learnt that no people know how to be free, who do not know how to be just.

The Cumberland Road was in part defended on the ground of compact. The general proposal of appropriations for internal improvements, in 1817, 1824, and 1828, was opposed by the following considerations.

1. That being negatived by the Convention, and not included among the powers conceded to Congress, it can only be defended, on the principle of the *General Welfare*. A principle that sets Congress free from all limits and restraints, and opens wide the door of despotic power; as it includes within itself all power whatever. Thus destroying all the limitations and land marks of the Constitution, and authorizing the assumption of powers by construction and implication, which the Convention expressly negatived, and refused to grant.

2. That it involves, and will induce, a system of enormous and extravagant expenditure, far beyond what the people should be called upon to bear; of indefinite limit, and perpetual duration; and a system of patronage and favouritism so extensive, as to endanger the liberties of the country. Individuals are biassed by jobs, contracts, superintendencies, and the expectation of them. States are bought by proposals of greater sums to be laid out in those States that support the measures of administration. (There are nearly 100 proposals of appropriation, from 1817 to the present time, for objects of no more *general* utility than the Maysville turnpike.)

3. That it takes from the right of the State governments, to improve their own territory in their own manner, and subjects such an extent of territory to the controul of the Executive and Judiciary of the Union, by means of roads and canals, in addition to fortifications, &c, that the rights

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of the States are nearly annihilated by adopting this proposal. They are intersected and interfered with in all directions.

4. That it is well calculated to absorb all surplus revenue, and thus perpetuate the northern system of Tariff taxation; which would fall of itself under a system of frugal expenditure, and increasing resources.

5. That if any power be really wanted by Congress, the people, when applied to in the way sanctioned by the Constitution, will readily grant it. But to seize on this extensive and indefinite power denied by the Convention, without application to the people, is rank usurpation; and the acts passed by usurped authority, are, and ought to be regarded as null and void.

6. That under this sweeping claim of the general welfare, and internal improvements built upon it, the public revenue may be dissipated in patronage and bribery. Nor is there any one of the reserved rights of the States, but may be easily prostrated by the influence of the General Government, combining with the larger States. The Union is no longer an Union of separate, sovereign and independent States, but of petty municipalities controulable by the power assumed at Washington. The Holy Alliance may defend its worst and wildest claims under this pretence. It implies despotic power, and mocks controul. The fashionable phrase now is, not a strict, but *a liberal construction of the Constitution;* which means any construction that suits the views of usurpation in any department of the Federal Government.

The long continuance and the successful growth of this system of *internal improvements* adopted by Congress in open and contemptuous defiance of the Convention and Constitution of 1787, is a deep disgrace on the moral courage and honesty of the country. Every administration will now look to its lucrative influence, and the extent of its patronage, as the surest basis of its power and popularity, and the most efficient means of protecting its own encroachments on the rights of the people. Nor is there any safety against absolute despotism, whatever may be the name given to our form of Government, but a speedy defalcation of two-thirds of the patronage which the States have been weak enough to confer on the Executive. Just before his own election, General Jackson complained of the extravagance of Mr. J. Q. Adam's administration, in raising the expenditure of the peace establishment to 12 millions. The public debt is now paid; and while this note is printing, it appears that the appropriations of 1836 have exceeded, it is said, 40 millions of dollars!

Such is a brief outline of the very important questions embraced by the records about to be inserted; and which will be better understood after the summary now offered to the reader's perusal. That summary will be of more value twenty years hence than it is now. The Editor presents it as a brief exposition of the constitutional doctrines of South Carolina, supported and corroborated by the documents that follow.

THOMAS COOPER.

Report of the Committee to whom was referred the Preamble and Resolutions, submitted by the honorable member from Chesterfield, on the subject of the Tariff, proposed at the last session of Congress. (The Editor cannot find this in the Pamphlet Laws, Reports and Resolutions of the appropriate year: nor in the Manuscript Journals and Minutes of the Legislature for that year. Nor can he refer to the State Gazette of Daniel Faust, then State Printer, inasmuch as all the copies of that Gazette have been consumed by fire. The Editor has taken this document, which carries veracity and accuracy on the face of it, from the 19th Vol. of Niles's Register, p. 345.)

LEGISLATURE OF SOUTH CAROLINA.

DECEMBER 8TH, 1820.

THE FOLLOWING REPORT OF THE COMMITTEE APPOINTED ON THE RESOLUTIONS REFERRED TO, WAS, ON WEDNESDAY, REPORTED TO THE HOUSE OF REPRESENTATIVES, AND ADOPTED BY THE HOUSE.

The Committee to whom was referred the Preamble and Resolutions, submitted by the honorable member from Chesterfield, (Pleasant May, Esq.) on the subject of the Tariff proposed at the last Session of Congress—

RESPECTFULLY REPORT,

That although your Committee do, in common, they believe, with a great majority of their fellow-citizens, and particularly those in the Southern and Eastern States, entirely concur with the honourable member, so far as the general principles of political economy involved in the resolutions, are concerned: although they most earnestly deprecate the restrictive system, attempted to be forced upon the nation, as premature and pernicious—as a wretched expedient to repair the losses incurred in some commercial districts, by improvident and misdirected speculation; or as a still more unwarrantable project to make the most important interests of the country subservient to the most inconsiderable, and to compel those parts of the Union which are still prosperous and flourishing, to contribute even by their utter ruin, to fill the coffers of a few monopolists in the others. Yet, when they reflect that the necessity at that time universally felt, of regulating the commerce of the country by more enlarged and uniform principles, was the first motive that induced the calling of a Convention in '87. When they consider, that among the powers expressly given up by the States, and vested in Congress by the Consti-

tution, is this very one of enacting all laws relating to commerce. *Above all*, when they advert to the consequences likely to result from the practice, unfortunately become too common, of arraying upon questions of national policy, the States as *distinct* and *independent sovereignties*, in opposition *to*, or (what is much the same thing,) with a view to exercise a controul *over* the General Government. Your Committee feel it to be their indispensable duty to protest against a measure, of which they conceive the tendency to be so mischievous, and to recommend to the House, that upon this, as upon every other occasion, on which the general welfare of the public is in question, they adhere to those wise, liberal and magnanimous principles, by which this State has been hitherto so proudly distinguished.

Report of the Special Committee on the decisions of the Federal Judiciary, and the Acts of Congress contravening the letter and spirit of the Constitution of the Union. (Pamphlet Laws, Reports and Resolutions of 1825, *p.* 88.*)*

IN THE HOUSE OF REPRESENTATIVES,

DECEMBER 15, 1825.

The Special Committee, to whom was referred so much of the Governor's Message as relates to "the decisions of the federal judiciary and the acts of Congress, contravening the letter and spirit of the Constitution of the Union," respectfully report, that they have reflected on the subject with due care, and feel no difficulty in forming upon it and expressing a distinct opinion. But before they state it, they beg leave to make a few prefatory remarks on the respective powers and disabilities of the United States and the individual States.

The United States of America differ in their forms of government from all other governments in the civilized world. When the thirteen primitive States declared themselves independent, and entered into articles of confederation and perpetual union with each other for their mutual safety and defence, it was agreed that each State should retain its sovereignty, freedom and independence, and every power, jurisdiction and right, which was not by the confederation expressly delegated to the United States in Congress assembled. The better to secure this sovereignty, freedom, independence, power, jurisdiction and rights, each State, in its own good time, formed a constitution for itself. Each State was an independent sovereignty, except what was surrendered for the purposes of war and defence, the public good, and general welfare. Over the commerce with foreign nations, Congress had little or no controul.

In this situation, it was found in the course of a few years' experience, that our foreign commerce could be better protected, and our national credit better secured, by surrendering more power, as regarded these subjects, into the hands of Congress; and this gave rise to the convention which formed the *Federal Constitution*, which delegated to Congress the complete controul over those questions so intimately connected with the general welfare and public good. But when enlarging the powers of the General Government; the States expressly stipulated, that

The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people. And that

The powers not delegated to the United States, are reserved to the States respectively, or to the people.

Among those rights retained in this constitution to the people, is the unalienable right of remonstrating against any encroachments upon that

constitution by the Congress of the United States, or any other officer belonging to or acting under the General Government.

This right is not only retained and unalienable, but it is the birth right of every freeman. It belongs to him either in his individual or aggregate, his private or political capacity. To restrain it when respectfully exercised, would be to establish that odious doctrine of non-resistance and perfect obedience.

The Committee, therefore, respectfully recommend to this House the adoption of the following Resolutions:—

1. *Resolved*, That Congress does not possess the power, under the constitution, to adopt a general system of internal improvement as a national measure.

2. *Resolved*, That a right to impose and collect taxes, does not authorize Congress to lay a tax for any other purposes than such as are necessarily embraced in the specific grants of power, and those necessarily implied therein.

3. *Resolved*, That Congress ought not to exercise a power granted for particular objects, to effect other objects, the right to effect which has never been conceded.

4. *Resolved*, That it is an unconstitutional exercise of power, on the part of Congress, to tax the citizens of one State to make roads and canals for the citizens of another State.

5. *Resolved*, That it is an unconstitutional exercise of power, on the part of Congress, to lay duties to protect domestic manufactures.

Resolved, That the House do agree to the Report. *Ordered*, That it be sent to the Senate for concurrence.

By order of the House.

R. ANDERSON, C. H. R.

IN THE SENATE, *December* 16, 1825.

Resolved, That this House do concur in the Report. *Ordered*, That it be returned to the House of Representatives.

By order of the Senate.

WM. D. MARTIN, C. S.

Memorial &c. : being the Report of a special Committee of the Senate of S. Carolina, on the resolutions submitted by Mr. Ramsay on the subject of States rights.—Dec. 12 *and* 19, 1827; *(Pamphlet laws, reports and resolutions of Dec. Session,* 1827, *page* 69.) *See also, the documents of the first Session of the* 20*th Congress of the United States ; document of the House of Representatives, No.* 65, *Jan.* 14, 1828, *having been read on that day as a Memorial to the House of Representatives of Congress, from the Legislature of South Carolina. (Printed from this last mentioned document.)*

IN THE SENATE,

DECEMBER 12, 1827.

The Committee, to whom was referred certain resolutions, directing an enquiry into the nature and origin of the Federal Government; and whether certain measures of Congress are, or are not, a violation of the letter and spirit of the Federal compact, Report, that they have maturely weighed and considered the subject entrusted to them, and are of opinion,

1. First, that the Constitution of the United States is not a compact between the people of the United States at large, with each other, but is the result of a compact originally formed between the people of thirteen separate and independent sovereignties, to produce and constitute a new form of government; as will abundantly appear by a reference to the journals of the old Congress, and of the General Convention which framed the Constitution.

The first Congress in America was that formed by the colonies in 1774 and 1775. It possessed, as is well known, no authority but what arose from *common consent.* The declaration of independence having absolved the colonies from all allegiance to the crown of Great Britain, it became necessary that the powers of Congress should be accurately defined—and hence arose the CONFEDERATION of 1781. This confederacy not producing the blessings which had been anticipated, and the war of the revolution having entailed upon the States a large public debt, and the States at the same time becoming careless or indifferent in furnishing their quotas of this burthen, and many of them indeed unable so to do, from the distresses incident to the want of a common head to regulate commerce, the necessity of new modelling the existing government became evident to all. The old Congress, taking advantage of this state of the public sentiment, wisely recommended that a convocation of the States should be held for the purpose of framing a constitution better suited to the exigences of the Union. This constitution, when finished, was to be submitted in the shape of a proposal, for the adoption or rejection of the different States. Deputies

from all the States were accordingly assembled in general convention; and a constitution having been finally agreed upon, it was ordered to be published for the information of the people, and each State Legislature was solicited to call a Convention for the purpose of ratifying or rejecting it. State conventions were accordingly assembled under the authority of the State Legislatures, and as soon as the ratifications of nine States were transmitted to the old Congress, arrangements were made to put the new Constitution into operation, and the old Government expired, as a matter of course.

If attention be given to the rise, progress and completion of the new Government, as above stated, it will be seen that the government of the Union does not emanate from the people of the United States at large, but from the people of the *different States*, as composing so many *distinct and independent sovereignties*.

First—The general convention was recommended by the old Congress, which was a pure *confederacy* of States. Secondly—The deputies to that convention were elected by the *State* Legislatures. Thirdly—In all the deliberations of the convention as to the best form of government for the Union, the votes were taken by *States*, and no measure agreed upon which was not approved of by a majority of the States represented; and lastly—The ratifications of such States as were willing to accede to the new Government, were transmitted as the ratifications of so many sovereign States—the assent of each State counting as one vote in making up the majority of *three fourths* of the States; such an assent of three fourths of the States being deemed a pre-requisite to the constitution's going into operation. The mere fact of the constitution's not resulting from a *majority of all the people* of the Union, nor from that of a *majority of the States*, but from the unanimous consent of the several States who were to be parties to it, proves beyond the possibility of doubt, that the act establishing the constitution, and giving it its binding efficacy, was purely the act of the people of the different States, as STATES, and not of the people at large. The Constitution was thus clearly FEDERAL, in its conception and in its CREATION.

It is with great pain that your Committee are constrained to observe that this does not appear to be the view of the Supreme Court of the United States. By the reasoning of the Court in the case of *McCulloch* vs. *the State of Maryland*, it would appear that the Constitution is regarded by that tribunal, as emanating from the *people*, and not from the State sovereignties; but it is evident, that this opinion is founded on a misconstruction of the term State Sovereignty; the Supreme Court contemplating the *State Legislatures*, as the only State *Sovereignties*; and seeing, that the ratifications of the instrument did not proceed from the State Legislatures, but from the State Conventions of the people, it was natural under such a view, that the Court should deny the doctrine of the government of the Union as proceeding from the States. It is scarcely necessary to remind the Legislative Body, that it is an incontrovertible axiom in republican politics, as founded on the inherent and natural, RIGHTS OF MAN, that the PEOPLE alone, in a State Convention, constitute the *true sovereignty* of that particular State, their power at such a period being without limits and without controul. The ratifications of the compact thus proceeding from the State Conventions, they necessarily become acts of more binding efficacy, and consequently of more complete sovereignty, than if they had been done by the State Legislatures. It is not competent for any State Legislature to associate its constituents, the people, in any new form of government with the people of other States. No

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legislative body can pretend to a power of this kind. A Legislature might have bound its constituents in a league or confederacy. In a confederacy of States, the acts of the Common Council are not exercised directly on the people; but in practice, go forth with no better authority than as recommendations to the different Sovereigns, who are parties to the league. It is the people alone *in convention*, who can enter into a compact, associating themselves in a new political relation with the people of other States; and when they do enter into such compacts, their acts become the acts of sovereign States, and the compact is a compact of States with each other, and not of the people of those States, as if they had constituted an entire people. In the formation of the Constitution of the United States, it might have been ordered, had the Convention willed it, that its ratification was to be derived from the people of the United States considered aggregately; in which case, the will of the majority of all the people of the United States would have been necessary before it should go into operation. But no such rule was adopted or even proposed, in the general convention. "Though the assent of the people was required to be given by deputies, elected for the purpose, this assent was, nevertheless, given by the people, not as *individuals* composing one *entire nation*, but as composing the separate and *independent communities* to which they severally belonged." The vote of each particular State Convention was transmitted as the vote of the State, as a SOVEREIGN BODY, and not as the act of the individuals of that State, as forming its proportion of the aggregate of all the inhabitants of the United States. If there be a fact, which determines beyond all dispute the clear intention of the convention, that the Government of the Union was to emanate from the State Sovereignties, it is that provision in the instrument which regards the ratification as complete, as soon as the people of nine States should assent to the Constitution. Such a provision as this would be utterly inconsistent with the opposite plan of making the consent of the people at large a pre-requisite to its operation, because it might have happened under such a plan, that *four large States*, rejecting the Constitution, might have composed the majority of all the inhabitants in the different States. It would be a reproach to the sagacity and foresight of the Convention to imagine, that if it was the intention of that Body that the Government should be *National* and not *Federal* in its creation—that it would set forth a proposal, or adopt a plan, by which it was possible that the then existing government should cease, and a new government should go into operation, with the assent of such nine States as might form a *minority* of the people of the United States.

The doctrine of the Constitution of the United States emanating from the people and not from the States, is in the opinion of your committee one of the most dangerous doctrines that can be promulgated; for by it is established the principle, that the Federal Government is not responsible for any violation of the compact, excepting to the people at large as its constituents. This would be CONSOLIDATION in its *very essence;* it would be to break down the lines which separate the powers of Congress from the powers of the States. It would at any time enable a combination of the people of such States as might constitute a majority of all the inhabitants of the United States, and who have particular local views or State interests to promote, to carry any measure whatever in Congress; and to the people of such

of the States as might form the minority, there would be no hope of redress. Congress, with the most unfair intentions to the smaller States, might even keep within the *letter* of the Constitution, by assigning for its acts of oppression to those States, such constitutional motives and reasons, as to defy all efforts to counteract its career of injustice by a resort to the tribunals of justice. On the other hand, the doctrine that the Constitution is a compact between the States as so many separate and distinct sovereignties, is a doctrine full of comfort and security to every real friend of union and of the liberties of the people. The necessary consequence of such a doctrine is, that if the social compact be violated in its spirit or its letter, and the States have the right to remonstrate, and to call back the parties to the original covenant, the remonstrance coming from such a quarter, will be promptly attended to, and the redress will be comparatively easy and certain; which never can be the case, where the people, as a minority, are left to seek their remedy.

It is most fortunate for the people of the Southern States, that the truth of a doctrine so indispensable to their safety, is so immoveably founded on the inherent, unalienable rights of man. All legitimate government is in the nature of a trust, and is the result, either of a compact between the people with one another, as is the case with a simple consolidated government; or, of States with each other, under a compound or mixed government. There is no reasoning which can impair a truth so evident. The Constitution of the United States, according to all our ideas of the origin of governments, is strictly and emphatically a form of government emanating from the States; and the manner in which its powers are to be exercised, is matter of convention between those States. The Federal Government has no rights. It has certain duties to perform, and to this end, is invested with certain powers. If it exercises any powers not delegated, there must be a responsibility somewhere—and this brings your committee,

2. Secondly—To the inquiry, whether, in the event of any abuse of power or violation of the letter or spirit of the Constitution, it belongs to the people at large or to the State Legislatures to remonstrate. In the opinion of your committee, the reponsibility of the Federal Government is of a *two-fold* character. First—it is responsible in certain cases to the people at large, upon whom, by the Constitution, *its power is wholly to operate.* Secondly—it is amenable to the State Legislatures, as representing the same people, distributed in separate sovereignties, by whom alone *the government was created.* In its CREATION, the government is thus as entirely FEDERAL, as in its operation it is strictly *national.* The *first* responsibility accrues whenever the government abuses any of its delegated powers, or rather injudiciously exercises them, to the injury of the people at large as its constituents. The *second* can only occur when power not delegated, is *assumed* to the injury of the people in their separate sovereignties. This distinction as to the responsibility of the national rulers, results from the mixed nature of our government. In a simple government, the only "safe-guards for arresting usurpation, and preserving the liberties of the people, are the *positive restrictions* on power, and the political *responsibility* of those who exercise power, to the people, on whom it operates." In that state of affairs, where the people are held together as one political society, and as regards civil and political rights, have but one common interest, and have it equally in their power to change their rulers, it is difficult to conceive how power abused or usurped, can operate beyond its responsibility. But in the anomalous scheme of the mixed government of the United States, where many re-

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presentative governments are bound together in one comprehensive whole, and where it becomes essential, that precise limits should be assigned to the jurisdiction of the supreme and the subordinate legislative authorities, it becomes indispensable, that the responsibility should be *as well to the people* in their *state governments*, as to the people considered as one *entire nation*. For mal-administration therefore, in the affairs of the government, which is neither more nor less than an abuse of the people's trust, it belongs to the people alone as a nation, to call their rulers to account. This can only be effected at the periods prescribed by the Constitution, when all power returning again at those periods to the people, they may thereafter commit it into other and safer hands. But to the people of the different states, through their organs, the State Legislatures, it equally appertains to remonstrate, and to restrain Congress when it would pass the boundary line of its powers, and usurp those which were reserved to the States.

To abuse power and to usurp power, are two things in their nature, totally distinct. Congress, in exercising the discretion with which it is unavoidably entrusted on many subjects, may so abuse that discretion, as not only to impair the prosperity, but actually to endanger the safety of the nation. For wrongs of this nature, there is no remedy but in a change of rulers. There ought to be no other remedy. There is here, no violation of the terms of the social compact of government between the confederated members, so as to alter the relations in which they stand to each other, and to the Federal Government. But when Congress assumes to itself a power unknown to the Constitution, and thus entrenches upon what is reserved to the States; here is an interference which goes to *the destruction of the compact itself;* and to the parties to that compact, it solely belongs, to insist upon a fulfilment of that compact. These parties being the people of the different States, it not only is their right, but it becomes an high duty of their local Legislatures to interfere. To consider the right to be in the people at large, and not in the State Legislatures, is, as has been already observed, to place the smaller States in the power of the larger; for it is not to be concealed, that the usurpations most likely to take place under the Federal Government, will not be such as will endanger any principle of public liberty, or the rights *expressly* reserved to the States, because there would be but one feeling amongst the people to resist it, and the remedy would be in the hands of the people; but the usurpations to be apprehended will be such, as are calculated to promote the interests of such States as form the majority, at the expense of others, which must always be in the minority. To the will of a majority of Congress, when it is in the exercise of its legitimate powers, it is the duty of the minority to submit. At such a time, the Government assumes its consolidated form, and obedience is as strictly due to its measures, however injuriously they may operate against the minority, as if it were a simple and not a mixed government. Not so, however, is it, when under a compact between States, the question presents itself, whether the Convention between those States has been adhered to in good faith or not. In a case of this kind, *majority* and *minority* are relations, which can have no existence. Each State having entered into the compact as a *Sovereign Body*, and not in conjunction with any other State, must judge for itself whether the compact has been broken or not.

The committee here take occasion to observe, that though under the Constitution, a tribunal is appointed to decide controversies, to which the United States shall be a party, and the States may often be willing to

leave to such a tribunal, many controversies; yet it must be evident, that collisions will sometimes arise between the States and Congress, when it would not only be unwise, but even unsafe to submit questions of disputed sovereignty to any judiciary tribunal. In theory, it may be delightful "to contemplate the spectacle of a Supreme Court sitting in solemn judgement, upon the conflicting claims of national and state sovereignty, and tranquilizing all jealous and angry passions, and binding this great confederacy in peace and harmony, by the ability, moderation and equity of its decisions." But our own experience has already satisfied us, that it belongs not to mortals to erect a tribunal, that shall feel itself wholly impartial on a question between the State and the National Governments; and least of all, ought the States to be willing to make the Supreme Court of the United States, the arbiter finally to decide points of vital importance to the States. The conduct of this Court, as far as your committee can judge of it, has inspired an universal and a justly merited confidence in the equity of its decisions in general, between citizens of one State and citizens of another State, nor can they for a moment doubt its competency, to decide with the utmost impartiality, all conflicting claims between one State and another State. But it is due to truth to state, that whenever the constitutionality of any act of the Federal Government has been called in question, this court has not so conducted itself, as to be esteemed a sufficiently impartial tribunal. The court which can confer by *implication* on the Congress of the United States, *a power to create a corporation* when there exists on the journals of the convention published under the authority of Congress, the irrefragable evidence that such a power was *proposed* to be *invested* in Congress, but *rejected by a vote of that body*, is not more likely to do justice to the State sovereignties, than the tribunal which would regard the Federal Constitution as emanating from the people at large, and not from the States, in the face of HISTORY and well attested FACT. Into both of these errors, has the Supreme Court unhappily fallen. But there is a peculiar propriety in a State Legislature undertaking to decide for itself, when the Constitution shall be violated in its *spirit* and not in its letter; these being cases in which no court, however well disposed, can be expected to give relief. Three memorable instances of this species of usurpation occurred in the years 1816, 1820 and 1824, where Congress, under every appearance of adhering to the letter of the compact, substantially has violated its spirit. A fourth instance may probably soon occur, which leads your committee to consider,

3. Thirdly—Whether Congress can so legislate as to protect the local interests of particular States at the expense of all the people of the United States; and whether Domestic Manufactures be a local or a general interest.

On the first part of this inquiry, it is believed that there exists no difference of opinion; it being admitted in and out of Congress, that local interests cannot be protected by the National Government. It is however insisted that Domestic Manufactures are a general interest. Your committee do not feel themselves bound to enter at large into reasons, to shew the little foundation there is for such an opinion; and the less disposed are they to argue the question, when they recollect, that from every quarter of the State there has been an almost unanimous expression of the public opinion, that manufactures are not a general interest, and that Congress has no power to foster and cherish them. But it certainly belongs to the subject to state, that your committee have examined the Constitution with the greatest care, and they can find in

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no part of it, any grant of power to promote any branch of internal industry, or any of the useful arts, by any other means than by the conferring of patent rights for new inventions. That the convention designedly withheld such a general power, abundantly appears from the journals of that body, already referred to. Two distinct propositions were at different periods made to amend the reported draft of the Constitution, by conferring on Congress, the power in question, but these propositions, together with others in relation to *science* and *agriculture* were not adopted; the convention finally coming to the conclusion, that Congress should "promote the progress of science and the useful arts BY securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." A clause this, so exclusive in its mode of expression, as to leave no doubt in the minds of your committee, that all other modes of encouraging the useful arts, excepting by patents, were to be prohibited.

This view coincides with, and is considerably enforced by a power reserved to the States "to lay imposts," *with the consent of Congress*, for *other* purposes than the execution of their inspection laws; a clause which, in the opinion of your committee, is not susceptible of any other explanation, than as a provision, to enable such State as might be desirous of protecting their domestic manufactures against foreign rivalry, to do so, by imposing in their own ports, imposts on the imported fabrics, with the consent of Congress. By referring to the secret debates of the Convention, it clearly appears that the insertion of this clause was for this purpose alone.

In addition, it may be urged that no interest can be recognized as a *general* interest within the meaning of the Constitution, which EACH State does not possess, in COMMON with EVERY OTHER State. The design of union amongst the States was, not that Congress should Legislate in cases to which the States were separately competent, but simply regulate such general concerns, as would have suffered by the exercise of individual or State Legislation. Among these general concerns, which the States were incompetent to regulate with any advantage, the most prominent was COMMERCE. To the necessity of a controuling power to regulate foreign trade, and to no other motive, does the Constitution OWE ITS EXISTENCE. This power, the old Congress did not possess. The States had repeatedly refused to grant such a power, because each State thought itself competent to regulate its own trade. But the experience of the first four years which succeeded the war of the revolution, having taught them their error, the people afterwards intreated their local assemblies to grant such a power to the common head of the confederacy. In the mean time, propositions were made for a Convention to frame a new Constitution. Thus it is plain, that it was not until the States were reminded by their own dear-bought experience, that Commerce *was* a general interest, that they were disposed to unite forever, for this, so great and so common a blessing to them all.

The Convention having been convened to form a Constitution, it adopted as the basis upon which were to be built the powers of the new government, the PRINCIPLE that all such interests as the States could not separately manage, should be transferred to the Federal Head. It is to be observed, that neither in the *old* nor in the *new* compact, is there a single subject specified for the Legislation of the General Council, in which EVERY State has not an immediate and a very important interest. All the enumerated powers in these two memorable instruments, are referable to WAR, PEACE, INDIAN TRADE,

COMMERCE and FOREIGN NEGOTIATION. The present Constitution was designed to supply all the deficiencies of the Confederation, and by an unanimous vote of the Convention, it was early decided, as appears by its journals, that the enumerated powers of the new government, should extend to EVERY subject of GENERAL interest. It results then as a fair and conclusive argument, that whatever subject was *purposely* excluded from the enumerated powers of Congress by the vote of the Convention, as an unfit subject for the care of the General Government, could not have been regarded as a general interest. A general power to promote Manufactures, Agriculture and Science, and to construct roads and canals, was positively and peremptorily excluded; and this, in the opinion of your committee, is an unanswerable reason why these subjects ought to be deemed LOCAL, and not general; if it were not already demonstrable to our senses, that any particular pursuit of human industry, followed by the people of some States, and in which those of other States are not at all engaged, must be a local interest of the States.

4. Fourthly—Your committee are of opinion, that Congress has no power to construct roads and canals within the limits of a State, without a violation of the Constitution. The power of making roads and canals is not an incidental, but is as primary and as original a power as any government can possibly exercise. That must be a substantive power in the strongest acceptation of the term, which involves a right of *jurisdiction* over *soil* and *territory*. From this species of jurisdiction, Congress is clearly prohibited by those clauses in the Constitution, which confine their jurisdiction to their forts, magazines, dock yards, &c. But independent of the plain extent of the instrument itself, as collected from its language, the journals of the Convention afford the evidence, that it was deemed unadvisable to entrust Congress with any such power. All the *propositions* to include roads and canals amongst the enumerated subjects for the National Legislature, were *rejected*. There existed a reason for the refusal of such a power to Congress, which your committee must ever regard as conclusive, which is, that such a power in Congress as well as in the States, would have been repugnant to the whole scheme and theory of the Constitution. The design of the Convention was, so to *discriminate* the *objects* which were to appertain to the different departments of power, that what was to be committed to the charge of one government, should not be interfered with by the other. The great difficulty in distributing power, was to adjust the *quantity* with which the General Government should be invested. That point once arranged, each government was then to be supreme in Legislation, as to the particular objects entrusted to its care. As the States had been in the habit of making roads and were fully competent to exercise such a power, and to the greatest advantage, it was not to be expected that they would be willing to yield this their power over Internal Improvements. To have admitted therefore, that a similar power ought to be invested in Congress, would involve the absurdity of causing the same object of Legislation and government to belong to the Federal and to the State authorities. There is no such hideous features as this, in the Federal compact. If the Constitution be examined with accuracy, it will be found, that with the exception of the two first enumerated powers of Congress, (which are *means* and not the *ends* of the government, or rather the power of the government, coupled with the trusts of the government,) that Congress must be regarded as supreme in Legislation, for all the objects entrusted to its management; and upon the

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same principle that Congress is supreme within its prescribed sphere of action, are the States equally supreme as o all objects reserved to them. If Congress therefore, can legislate on the subject of roads and canals, the States cannot interfere by exercising a similar power, (for both cannot have jurisdiction,) and *vice versa*. The subject of Internal Improvements, is either a general or local interest, in the view of the Constitution. It cannot be both. If it be a general interest, Congress must either be supreme in its jurisdiction over the subject, by extending its laws to such roads and canals, to the exclusion of State authority, or it cannot act at all. There can be no concurrence of Legislation, excepting as to the means of executing the different trust; for which each government was created. The bare admission that a State can lawfully exercise sovereignty on any particular object of civil government, deprives Congress of any power over the same object. The States having always exercised the power over roads and canals, and there being no specific grant of any such power to Congress, the right is in the States and not in Congress. Nor can your Committee conceive that the assent even of a State Legislature to Internal Improvements, made by Congress within its limits, can confer on that body the power in question. Congress has no right to exercise any power whatever, but what it receives by special grants from the States. If a State were to give to another State a power to construct a road or a canal within its limits, this would amount to a transfer to that State of a portion of its sovereignty. Were Congress to be permitted to receive such a power as a gift from any particular State, it would be to say, that Congress can exercise a new sovereign power unknown to the Constitution, with the consent of, or by the act of one State. This principle will hardly be contended for. It is too clear, that Congress can exercise no powers but what it receives from the States, by the terms of the Constitution. If, the better to promote union, it needs additional powers, the mode prescribed is an amendment to the Constitution. If a State can part with the smallest portion of its sovereignty to Congress, it can part with the whole; and if Congress could receive an accession of power in this way, it would be to put it in the power of one State to amend the Constitution, when the instrument requires the assent of three fourths, and that assent to be given in another way. There are other views of this subject, but they have been so often taken, and are so familiar to our citizens, that your committee forbear to dwell longer on this head, but proceed to that part of their inquiry, which asks,

5. Fifthly, Whether under the power "to promote the general welfare," Congress can expend money on internal improvements, or for any purposes not connected with the enumerated objects in the Constitution. What has already been urged in the preceding inquiry, will be equally applicable to this. If Congress has not the power to construct roads and canals in the States, it cannot appropriate money for such purposes. Congress has either all power over certain trusts, or no power at all. There can be no such operation in either government, as *indirect* legislation, in order to come at any particular object. Each government is fully invested with complete authority to approach the legitimate objects of its own special or general care, *honestly*, *fairly*, and *openly*. If, in the desire to obtain any particular object, either government discovers that it cannot reach that object otherwise than circuitously, this is conclusive to shew, that it belongs not to itself but to the opposite government. The term "general welfare," in the opinion of your committee, means nothing more than the national welfare. That can only be deemed an appropriation for

national purposes, which can be referred to objects of general interest in all the States. These objects being all specified in the Federal compact, it follows, that if any appropriation of money has not a direct and a natural relation to some one or other of those objects, it cannot constitutionally be made. The enumerated objects in the Constitution, (with the exception of the power to levy and appropriate money) are the TRUSTS which Congress is to execute. The power to appropriate money to the general welfare is not a *naked* power. It is the POWER *coupled* with the TRUSTS, to execute which, the government was created.

6. Sixthly. As to that part of the duty of the Committee which solicits an inquiry whether Congress can extend its legislation to the means of meliorating the condition of the free coloured or slave population of the United States, your Committee have no hesitation in saying, that this is a subject in which there can be no reasoning, between South-Carolina and any other government. It is a question altogether of FEELING. Should Congress claim a power to discuss and to take any vote upon any question connected with the domestic slavery of the Southern States, (excepting it be to devise the means of prohibiting the slave trade, the only power which it has by the terms of the Constitution,) it is not for your Committee to prescribe what course ought to be adopted to counteract the evil and the dangerous tendency of public discussions of this nature. The minds of your citizens are already made up, that if such discussions appertain as a matter of right to Congress, it will be neither more nor less than the commencement of a system, by which, the peculiar policy of South Carolina, upon which are predicated her resources and her prosperity, will be shaken to its very foundations. In the opinion of your Committee, there is nothing in the catalogue of human evils, which may not be preferred to that state of affairs, in which the slaves of our States shall be encouraged to look for any melioration in their condition, to any other body, than to the State Legislature of South Carolina. Your Committee forbear to dwell on this subject—it is a subject on which no citizen of South Carolina needs instruction—one common feeling inspires us all with a firm determination not to submit to a species of legislation which would light up such fires of intestine commotion in our borders, as ultimately to consume our country.

Lastly—It remains for your Committee to report what measures in their judgment the Legislature ought to take in order to preserve the State sovereignty. This is an inquiry of awful importance, and the committee are not disposed to shrink from the duty thus devolved on them. That the Congress of the United States has been in the exercise of powers, not warranted by the Constitution, and that the tendency of some of their measures is calculated, seriously to impair the vital interests of South Carolina, by diminishing her foreign commerce, whilst the effect of other measures is to augment the patronage of the General Government, and thus to diminish that necessary *State* influence, which is essential to the preservation of the State sovereignties, and which State influence can only exist, when the States are to manage all internal concerns, are truths daily becoming more and more evident to all our citizens. South Carolina felt them sorely, but she has not murmured—from the foundation of the government until the present time, she has uniformly exhibited, as your Committee believe, an illustrious example of a steady and an unalterable devotion to the constitution of the United States. She has never at any time arrayed herself against the Government of the Union, but has discharged all her duties as a member of the great American family, with fidelity and cheerfulness. If she has not hitherto car-

ried her complaints to the great councils of the nation, it was not because she had no cause of dissatisfaction, but because she always cherished the hope that some re-action in public sentiment throughout the United States might take place, and that the People themselves would in time be made sensible of the danger of a limited body, like that of Congress, being permitted to transcend its powers, and would apply the remedy. But these hopes your committee regret to state are all dissipated, and they too plainly perceive, that to submit longer to the evils of misrule founded on usurpation, can have no other tendency, than to invite such fresh assumptions of power from time to time, as must inevitably merge all power and all influence in one consolidated government.

It is fortunate for South Carolina that she has hitherto endured with so much patience, and certainly with not less patriotism, the aggressions of Congress upon her sovereign rights. But let her remonstrances be couched and her complaints be told in a mild and dignified tone, and in respectful language. In all her communications with the common head of the confederated family, let her unceasing anxiety for the Union of the States, be seen, felt and acknowledged by all. If, after all her efforts to dissuade the national councils from persisting in claims, which if pressed farther, must inevitably cut us off, limb by limb, from the great body politic, Congress shall, contrary to the hopes of your committee, still persevere in its claims to exercise extensive powers by construction, and thus drive into alienated feelings a portion of the Union, hitherto so devoted to Union; South Carolina, in such an event, will have at least the consolation to know, that the fault will not be her's.

But in the opinion of your Committee, it is all-important that whatever is to be done by South Carolina, ought to be so done, as to impress upon the minds of the Congress of the United States, that she does not at this conjuncture approach the National Legislature as a suppliant, or as a memorialist, but as a SOVEREIGN and an EQUAL. When Congress acts within the sphere of its expressly delegated powers, the supremacy of its laws and its powers must be acknowledged by all the States, and by no State in the Union, will obedience to the decrees of the Supreme Council be more cheerfully rendered, than by South Carolina. But when the ground of complaint is, a violation of the great covenant which binds together the Confederacy, each member is a sovereign, when it demands a fulfilment of that compact in its spirit, as well as in its letter, as it was when it originally ratified that agreement. In all communications, therefore, which may be necessary between a member of the Confederacy, and the common head, it behoves that member not to forget her *Rank* as a *Sovereign*. At such a time she must be attired in her full robes of sovereignty—she must cause her sentiments to be conveyed to Congress in a manner so imposing, as to evince that she would have the intercourse regulated as is proper between one sovereign and another; and that whilst she would earnestly solicit a continuance of that friendship and good feeling, which has so long been characteristic of the American family, she is yet unwilling to yield rights of vital importance. To the safety of States, it is indispensable that Congress should be in perpetual remembrance, that it is a sovereign and supreme body, only when it extends its authority to its legitimate objects of government—and that at ALL OTHER periods, the States are equally supreme, and never so supreme as when they are about to demand the fulfilment of the original compact. The sovereignty of the States is a flag that must NEVER be struck.

If there be one feature in our well-contrived and complicated system of government, which justly demands the admiration of the world—upon

which the eye of the patriot loves to gaze—and the hopes of millions of freemen in both hemispheres seem to be suspended—it is that contrivance in the great work of the Constitution, by which one general and so many subordinate and local sovereignties, all of them so many orbs, differing from each other in magnitude and in splendour, most wonderfully move together in "concerted and harmonious action," diffusing the blessings of the light of knowledge, and of civil and religious liberty, over a portion of the globe made up of a people dissimilar and heterogeneous in their habits, and differing from each other in almost every thing but in their innate love of liberty and detestation of tyranny and misrule. Let not then the harmony, order and connexion by which our comprehensive scheme of representative governments has been hitherto preserved, be interrupted by the falling of any of the orbs, from their spheres, but let "their motions and their influence be all so regulated and exercised, that whilst they shall in a very intelligible and striking manner declare the wisdom" of their great author the Convention, and for ever "constitute the magnificent heralds of a praise" which belongs to that body, to which neither speech nor language is adequate; they shall at the same time distribute all that is necessary for the political health, comfort and security of all the inhabitants of the United States.

In the opinion, however, of your Committee, this harmony of the General and State Governments can only be preserved by the promptest notice, by the State Legislatures, of any infraction of the Constitution, however unimportant it may appear at the time, in its effects upon the general community. In a system by which so many political bodies are to be in constant motion, the most trifling aberration of any one, from the circuit in which it is designed to move, breaks up the great design. It thus becomes an high duty in every State Legislature to use its best exertions to bring back the government to its first principles, whenever it departs from the compact; and this, it may always do, with calmness, with moderation, and yet with becoming firmness. If the United States' Government can construct one road or canal within the body of a State, it may construct a thousand, and thus draw within the vortex of its influence, what properly belongs to the States. If Congress can expend one thousand dollars to purposes not enumerated in the Constitution, it may expend an hundred millions, and in this way so increase its patronage by jobs and contracts, as to leave little or nothing for the subordinate authorities to do. If Congress can promote the domestic manufactures of some States, it can, with the same propriety, encourage, at its caprice, northern or southern agriculture, or other branches of internal industry, and thus constantly to *impinge* upon the local concerns of the States. If it can legislate in one way on the coloured population of the United States, it may legislate in various other ways. If, in a word, the General Government is to use constructive powers, or can pass any laws but such as are *necessary* and *proper* to the execution of its enumerated powers, then is the object of the enumeration of powers in the instrument defeated. In stepping across the boundaries of power prescribed by the Constitution, there are no degrees in the guilt of that Government, which is the trespasser, whether the trespass be committed by the State, or the Federal authorities. It is the intention which accompanies the act, that constitutes the crime, and this intention is as much embodied into the guilt of usurpation, if one dollar be taken out of the pockets of our citizens, to encourage a monopoly, as if Congress, by one "fell swoop," were to prostrate all the powers of the State Legislatures.

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If there be an evil in our country, the anticipation of which we ought to dread, and which, if it ever were to take place, would destroy civil freedom itself, it is that which would consolidate all the influence which is now distributed between so many States, into the hands of the Federal Government. From the consolidation of all *influence*, the transition is natural and easy to the consolidation also of all *power*. Such a government, in a country where the interests of its different sections must be more or less dissimilar, would be the worst species of tyranny which a minority of some States could possibly endure by the oppression of others. The only remedy, as your Committee have already observed, is for the State Legislatures to be watchful, and to remonstrate with Congress when necessary. That the period has arrived, when remonstrance is not only proper, but its neglect would be a crime, seems to be the voice of South Carolina.

The Committee, in conformity with the above report, recommend the adoption of the following resolutions:

1. *Resolved*, That the Constitution of the United States is a compact between the people of the different States with each other, *as separate, independent sovereignties:* and that for any violation of the letter or spirit of that compact by the Congress of the United States, it is not only the right of the *people*, but of the *Legislatures*, who represent them to every extent not limited, to remonstrate against violations of the fundamental compact.

2. *Resolved*, That the Acts of Congress, known by the name of Tariff Laws, the object of which is not the raising of revenue, or the regulation of foreign commerce, but the promotion of domestic manufactures, are violations of the Constitution in its spirit, and ought to be repealed.

3. *Resolved*, That Congress has no power to construct roads and canals in the States, for the purposes of internal improvement, with or without the assent of the States in whose limits those internal improvements are made: the authority of Congress extending no farther than to pass the "*necessary* and *proper* laws" to carry into execution their enumerated powers.

4. *Resolved*, That the American Colonization Society is not an object of national interest, and that Congress has no power, in any way, to patronize or direct appropriations for the benefit of this or any other society.

5. *Resolved*, That our Senators in Congress be instructed, and our Representatives requested to continue to oppose every increase of the tariff *with a view to protect domestic manufactures*, and all *appropriations to the purposes of internal improvements* of the United States, and all *appropriations in favour of the Colonization Society*, or the *patronage of the same*, either directly or indirectly by the General Government.

6. *Resolved*, That the Governor be requested to transmit copies of this preamble and resolutions to the Governors of the several States, with a request that the same be laid before the Legislatures of their respective States; and also to our Senators and Representatives in Congress, to be by them laid before Congress for consideration.

Resolved, That the Senate do agree to the report. *Ordered*, That it be sent to the House of Representatives for concurrence.

By order of Senate,

JOB JOHNSTON, C. S.

IN THE HOUSE OF REPRESENTATIVES,

December 19, 1827.

Resolved, That the House do concur in the Report. *Ordered*, That it be returned.

By order of the House,

R. ANDERSON, C. H. R.

PROTEST AND INSTRUCTIONS

OF THE LEGISLATURE OF SOUTH CAROLINA, ON THE RIGHT OF CONGRESS TO IMPOSE PROTECTING DUTIES ON IMPORTS.

(Pamphlet laws, reports and resolutions for 1828, *pages* 17, 18, 19.*)*

December 19, 1828.

The Senate and House of Representatives of South Carolina, now met and sitting in General Assembly—through the Honorable William Smith, and the Honorable Robert Y. Hayne, their representatives in the Senate of the United States, do, in the name and on behalf of the good people of the said Commonwealth, solemnly protest against the system of protecting duties lately adopted by the Federal Government, for the following reasons:—

1. Because the good people of this Commonwealth believe that the powers of Congress were delegated to it in trust for the accomplishment of certain specified objects, which limit and controul them, and that every exercise of them for any other purposes, is a violation of the constitution, as unwarrantable as the undisguised assumption of substantive independent powers not granted or expressly withheld.

2. Because the power to lay duties on imports is, and in its very nature can be, only a means of effecting the objects specified by the constitution; since no free government, and least of all a government of enumerated powers, can of right impose any tax (any more than a penalty,) which is not at once justified by public necessity, and clearly within the scope and perview of the social compact; and since the right of confining appropriations of the public money to such legitimate and constitutional objects, is as essential to the liberties of the people, as their unquestionable privilege to be taxed only by their own consent.

3. Because they believe that the Tariff Law, passed by Congress at its last session, and all other acts of which the principal object is the protection of manufactures, or any other branch of domestic industry—if they be considered as the exercise of a supposed power in Congress, to tax the people at its own good will and pleasure, and to apply the money raised to objects not specified in the constitution—is a violation of these fundamental principles, a breach of a well defined trust, and a perversion of the high powers vested in the Federal Government for Federal purposes only.

4. Because such acts, considered in the light of a regulation of commerce, are equally liable to objection—since although the power to regulate commerce, may, like other powers, be exercised so as to protect domestic manufactures, yet it is clearly distinguished from a power to do so *eo nomine*, both in the nature of the thing, and in the common

acceptation of the terms; and because the confounding of them would lead to the most extravagant results, since the encouragement of domestic industry implies an absolute controul over all the interests, resources and pursuits of a people, and is inconsistent with the idea of any other than a simple consolidated government.

5. Because, from the cotemporaneous exposition of the constitution, in the numbers of the Federalist, (which is cited only because the Supreme Court has recognized its authority,) it is clear that the power to regulate commerce was considered by the convention as only incidentally connected with the encouragement of agriculture and manufactures; and because the power of laying imposts and duties on imports, was not understood to justify in any case a prohibition of foreign commodities, except as a means of extending commerce by coercing foreign nations to a fair reciprocity in their intercourse with us, or for some other bona fide commercial purpose.

6. Because, that whilst the power to protect manufactures is no where expressly granted to Congress, nor can be considered as necessary and proper to carry into effect any specified power, it seems to be expressly reserved to the states by the tenth section of the first article of the constitution.

7. Because, even admitting Congress to have a constitutional right to protect manufactures by the imposition of duties or by regulations of commerce, designed principally for that purpose, yet a Tariff of which the operation is grossly unequal and oppressive, is such an abuse of power, as is incompatible with the principles of a free government and the great ends of civil society, justice and equality of rights and protection.

8. Finally, because South Carolina, from her climate, situation, and peculiar institutions, is, and must ever continue to be, wholly dependent upon agriculture and commerce, not only for her prosperity, but for her very existence as a state—because the abundant and valuable products of her soil—the blessings by which Divine Providence seems to have designed to compensate for the great disadvantages under which she suffers in other respects—are among the very few that can be cultivated with any profit by slave labor—and if by the loss of her foreign commerce, these products should be confined to an inadequate market, the fate of this fertile state would be poverty and utter desolation—her citizens in despair would emigrate to more fortunate regions, and the whole frame and constitution of her civil polity be impaired and deranged, if not dissolved entirely.

Deeply impressed with these considerations, the Representatives of the good people of this Commonwealth, anxiously desiring to live in peace with their fellow citizens, and to do all that in them lies to preserve and perpetuate the union of the states and the liberties of which it is the surest pledge—but feeling it to be their bounden duty to expose and resist all encroachments upon the true spirit of the constitution, lest an apparent acquiescence in the system of protecting duties should be drawn into precedent, do, in the name of the Commonwealth of South Carolina, claim to enter upon the journals of the Senate, their protest against it, as unconstitutional, oppressive, and unjust.

H. DEAS, *President of the Senate.*

L. S. B. F. DUNKIN, *Speaker of the House of Representatives.*

STEPHEN D. MILLER, *Governor.*

RESOLUTIONS ON THE RIGHT OF CONGRESS TO IMPOSE PROTECTING DUTIES.

(Pamphlet Laws, Reports and Resolutions for 1828, *p.* 19.*)*

In the House of Representatives, December 20, 1828.

1. *Resolved*, That the opinion of this Legislature, on the subject of the assumed right of Congress to regulate duties on imports, for the purpose of encouraging domestic industry, as heretofore expressed in the various resolutions adopted in the years 1825 and 1827, is unchanged; and after the further aggression by the passage of the Tariff Act of 1828, this Legislature is restrained from the assertion of the sovereign rights of the state, by the hope that the magnanimity and justice of the good people of the Union will effect the abandonment of a system, partial in its nature, unjust in its operation, and not within the powers delegated to Congress.

2. *Resolved*, That the measures to be pursued consequent on the perseverance in this system are purely, questions of expediency, and not of allegiance; and that for the purpose of ascertaining the opinion and inviting the co-operation of other states, a copy of these and the resolutions heretofore adopted by this legislature, be transmitted to the Governors of the several states, with a request that they be laid before the several Legislatures, to determine on such ulterior measures as they may think the occasion demands.—*Ordered* to Senate for concurrence.

By order of the House. R. ANDERSON, C. H. R.

In the Senate, December 20, 1828.

Resolved, That the Senate concur. JOB JOHNSTON, C. S.

EXPOSITION AND PROTEST

REPORTED BY THE SPECIAL COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF SOUTH CAROLINA ON THE TARIFF. *

Read and ordered to be Printed,

DECEMBER 19, 1828.

THE COMMITTEE OF THE WHOLE, to whom were referred the Governor's Message, and various memorials on the subject of the Tariff, having reported, and the House having adopted the following resolution, viz:

"*Resolved*, That it is expedient to protest against the unconstitutionality and oppressive operation of the system of protecting duties, and to have such protest entered on the Journals of the Senate of the United States—Also, to make public exposition of our wrongs, and of the remedies within our power, to be communicated to our sister States, with a request that they will co-operate with this State in procuring a repeal of the Tariff for protection, and an abandonment of the principle; and if the repeal be not procured, that they will co-operate in such measures as may be necessary for arresting the evil."

"*Resolved*, That a Committee of seven be raised to carry the foregoing resolution into effect," which was decided in the affirmative, and the following gentlemen appointed on the committee, viz; JAMES GREGG, D. L. WARDLAW, HUGH S. LEGARE, ARTHUR P. HAYNE, WILLIAM C. PRESTON, WILLIAM ELLIOTT, and R. BARNWELL SMITH.

The Special Committee, to whom the above Resolution was referred, beg leave to report the following Exposition and Protest—

EXPOSITION.

The Committee have bestowed on the subject referred to them the deliberate attention which its importance merits; and the result, on full investigation, is, an unanimous opinion, that the Act of Congress of the last session, with the whole system of legislation imposing duties on imports, not for revenue, but for the protection of one branch of industry, at the expense of others, is unconstitutional, unequal and oppressive;

* This document is omitted in the Pamphlet Laws, Reports and Resolutions of that Session. The Editor has inserted it from the published copy of D. W. SIMS, State Printer, Columbia, South-Carolina, 1829.

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calculated to corrupt the public morals, and to destroy the liberty of the country. These propositions they propose to consider in the order stated, and then to conclude their report, with the consideration of the important question of the remedy.

The Committee do not propose to enter into an elaborate or refined argument on the question of the constitutionality of the Tariff system.

The general government is one of specific powers, and it can rightfully exercise only the powers expressly granted, and those that may be "necessary and proper" to carry them into effect; all others being reserved expressly to the States, or to the people. It results necessarily that those who claim to exercise a power under the constitution, are bound to shew that it is expressly granted, or that it is necessary and proper as a means to some of the granted powers. The advocates of the Tariff have offered no such proof. It is true, that the third section of the first article of the constitution of the United States authorizes Congress to lay and collect an impost duty, but it is granted as a tax power, for the sole purpose of revenue; a power in its nature essentially different from that of imposing protective or prohibitory duties. The two are incompatible; for the prohibitory system must end in destroying the revenue from impost. It has been said that the system is a violation of the spirit and not the letter of the constitution. The distinction is not material. The constitution may be as grossly violated by acting against its meaning as against its letter; but it may be proper to dwell a moment on the point, in order to understand more fully the real character of the acts under which the interest of this, and other States similarly situated, has been sacrificed. The facts are few and simple. The constitution grants to Congress the power of imposing a duty on imports for revenue, which power is abused by being converted into an instrument for rearing up the industry of one section of the country on the ruins of another. The violation then consists in using a power granted for one object, to advance another, and that by the sacrifice of the original object. It is, in a word, *a violation of perversion*, the most dangerous of all, because the most insidious and difficult to resist. Others cannot be perpetrated without the aid of the judiciary; this may be, by the executive and legislative alone. The courts by their own decisions cannot look into the motives of legislators—they are obliged to take acts by their titles and professed objects, and if *they* be constitutional they cannot interpose their power, however grossly the acts may violate the constitution. The proceedings of the last session sufficiently prove, that the House of Representatives are aware of the distinction, and determined to avail themselves of the advantage.

In the absence of arguments drawn from the constitution itself, the advocates of the power have attempted to call in the aid of precedent. The committee will not waste their time in examining the instances quoted. If they were strictly in point, they would be entitled to little weight. Ours is not a government of precedents, nor can they be admitted, except to a very limited extent, and with great caution, in the interpretation of the constitution, without changing in time the entire character of the instrument. The only safe rule is the constitution itself, or, if that be doubtful, the history of the times. In this case, if doubts existed, the journals of the convention would remove them. It was moved in that body to confer on Congress the very power in question, to encourage manufactures; but it was deliberately withheld, except to the extent of granting patent rights for new and useful inventions. Instead of granting the power to Congress, permission was given to the States to impose duties, with consent of that body, to encourage their own manufactures; and

thus in the true spirit of justice, imposing the burden on those who were to be benefited. But giving to precedents whatever weight may be claimed, the committee feel confident, that in this case there are none in point, previous to the adoption of the present Tariff system. Every instance which has been cited, may fairly be referred to the legitimate power of Congress to impose duties on imports for revenue. It is a necessary incident of such duties to act as an encouragement to manufactures, whenever imposed on articles which may be manufactured in our own country. In this incidental manner Congress has the power of encouraging manufactures; and the committee readily concede, that in the passage of an impost bill, that body may, in modifying the details, so arrange the provisions of the bill, as far as it may be done consistently with its proper object, as to aid manufactures. To this extent Congress may constitutionally go, and has gone from the commencement of the government, which will fully explain the precedents cited from the early stages of its operation. Beyond this, *they* never advanced until the commencement of the present system, the inequality and oppression of which your committee will next proceed to consider.

The committee feel, on entering upon this branch of the subject, the painful character of the duty they must perform. They would desire never to speak of our country, as far as the action of the general government is concerned, but as of one great whole, having a common interest, which all its parts ought zealously to promote. Previously to the adoption of the Tariff system, such was the unanimous feeling of this State; but in speaking of its operation it will be impossible to avoid the discussion of sectional interest, and the use of sectional language. On its authors, however, and not on us, who are compelled to adopt this course in self-defence, by the injustice and oppression of their measures—be the censure. So partial are the effects of the system, that its burdens are exclusively on one side, and its benefits on the other. It imposes on the agricultural interest of the South, including the South West, and that portion of our commerce and navigation engaged in foreign trade, the burden not only of sustaining the system itself, but that also of sustaining government. In stating the case thus strongly, it is not the intention of the committee to exaggerate. If exaggeration were not unworthy of the gravity of the subject, the reality is such as to render it unnecessary.

That the manufacturing States, even in their own opinions, bear no share of the burden of the Tariff in reality—we may infer with the greatest certainty from their own conduct. The fact, that they incessantly demand an increase of duties, and consider every addition as a blessing, and a failure to obtain one, a curse, is the strongest confession, that whatever burden it imposes, in reality falls, not on them, but on others. Men ask not for burdens, but for benefits. The tax paid by the duty on imports, by which, with the exception of the receipts from the sale of the public lands, the government is wholly supported, and which, in its gross amount is annually equal to about $23,000,000, is then in truth no tax on them. Whatever portion of it they advance, as consumers of the articles on which it is imposed, returns to them from the labour of others, with usurious interest, through an artfully contrived system. That such are the facts, the committee will proceed to demonstrate by other arguments, than the confession of the party by its acts, conclusive as that ought to be considered.

If the duty were imposed upon exports instead of imports, no one would doubt its partial operation. It would clearly fall on those engaged in rearing products for foreign markets, and as rice, tobacco and cotton

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constitute the great mass of our exports, such a duty would, of necessity, mainly fall on the Southern States, where they are exclusively cultivated; and to prove that the burthen of the Tariff also falls on them almost exclusively, it is only necessary to shew, that, as far as their interest is concerned, there is little or no difference between an export and an import duty. We export to import. The object is, an exchange of the fruits of our labour, for those of other countries. We have, from soil and climate, a facility in rearing certain great agricultural staples, while other and older countries, with a dense population, and capital greatly accumulated, have equal facility in manufacturing various articles suited to our use; and thus a foundation is laid for an exchange of the products of labour, mutually advantageous. A duty, whether it be laid on imports or exports, must fall upon this exchange, and on whichever laid in our country, must in reality be paid by the American producer of the articles exchanged. Such must be the operation of all taxes on sales or exchanges. The owner in reality pays it, whether laid on the vender or purchaser. It matters not in the sale of a tract of land, or any other article, if a tax be imposed on the sale, whether it be paid by him who sells or him who buys; the amount must, in both cases, be deducted from the price. Nor can it alter, in this particular, the operation of such a tax, if imposed on the exchanges of communities instead of individuals. Such exchanges are but the aggregate of sales of the individuals of the respective countries, and must, if taxed, be governed by the same rules. Nor is it material whether the exchange be barter or sale, direct or circuitous; in every case it must fall on the producer. To the growers of rice, cotton and tobacco, it is the same whether the government takes one third of what they raise, for the liberty of sending the other two-thirds abroad; or one third of the salt, sugar, iron, coffee, cloth and other articles they may need in exchange, for the liberty of bringing them home; in both cases he gets a third less than he ought, a third of his labour is taken; yet the one is an import and the other an export duty. It is true, that a tax on the imports, by raising the price of the articles imported, may, in time, produce the supply at home, and thus give a new direction to the exchanges of a country; but it is also true, that a tax on the exports, by diminishing at home the price of the raw material, may have the same effect, and with no greater burden to the grower. Whether the situation of the South will be materially benefitted by this new direction to its exchanges, will be considered hereafter; but whatever portion of our foreign exchanges may in fact remain in any stage of this process of changing her market, must be governed by the rule laid down. Whatever duty may be imposed to bring it about, must fall on the foreign trade which remains, and be paid by the *South almost exclusively;* as much so as an equal amount of duty on their exports.

Let us now trace the operation of the system in some of its prominent details, in order to understand with greater precision, the extent of the burden it imposes on us, and the benefits which it confers, at our expense, on the manufacturing States.

The committee, in the discussion of this point, will not aim at minute accuracy. They have neither the means nor the time requisite for that purpose, nor do they deem it necessary, if they had, to estimate the fractions of gain or loss on either side, in transactions of such great magnitude. The exports of domestic produce, in round numbers, may be estimated as averaging $53,000,000 annually, of which, the States growing cotton, rice and tobacco, produce about $35,000,000. The average value of the exports of cotton, tobacco and rice, for the last four years,

exceed $35,500,000, to which if we add flour, lumber, corn, and various other articles, exported from the same States, but which cannot be distinguished on the Custom House books from exports of the same description from the other States, the amount must be equal to that stated. Taking it at that sum, the exports of the Southern or staple States, and of the other States, will then stand as $37,000,000 to $16,000,000, considerably exceeding the proportion of two to one, while their population, estimated in federal numbers, is the reverse, the former sending to the House of Representatives 76 members and the latter 137. It follows that one third of the Union exports near two thirds of the domestic products. Such then is the amount of labour which our country annually exchanges with the rest of the world, and such our proportion. The government is supported almost entirely by a tax on this exchange, in the shape of an import duty, the gross amount of which is annually about $23,000,000, as has been already stated. Previous to the passing of the act of the last session, this tax averaged about 37½ per cent on the value of the imports. What addition that has made, it is difficult with the present data to establish with precision; but it is certainly short of the truth to state it to be an average increase of 7½ per cent. Thus making the present duty to average at least 45 per cent, which on $37,000,000, the amount of our share of the exports, will give the sum of 16,650,000, as our share of the general contributions to the Treasury.

Let us take another and perhaps more simple and striking view of this important point. Exports and imports must be equal in a series of years. This is a principle universally conceded. Let it then be supposed for the purpose of illustration, that the United States were organized into two separate and distinct Custom House establishments; one for the staple States, and the other for the rest of the Union; and that all commercial intercourse between the two sections were taxed, in the same manner and to the same extent with that now imposed on the commerce with the rest of the world. The foreign commerce under the circumstances supposed, would be carried on from each section, direct with the rest of the world; and the imports of the Southern Custom House establishment, on the principle that imports and exports must be equal, would annually amount to $37,000,000, which at 45 per cent, the average amount of the impost duty, would give an annual revenue of $16,650,000, without increasing the burden on the people of these States one cent. This would be the amount of the revenue on the exchange of that portion of their products, which go abroad; but if we take into the estimate the duty which would accrue on the exchange of the products with the manufacturing States, which now in reality is paid by the Southern States in the shape of increased prices, as a bounty to the manufactories, but which on the supposition would be paid, as a part of their revenue at the Custom House, many millions more would have to be added.

But it is contended that the consumers really pay the impost, and, as the manufacturing States consume a full share, in proportion to their population, of the articles imported, they must also contribute their full share to the Treasury of the Union. The committee will not deny that the consumers pay the duties, and will take it for granted that the consumption of imported articles is in proportion to population. The manufacturing States, however, indemnify themselves, and more than indemnify themselves for the increased price they pay on the articles they consume, as has already been proved, by their confession, in a form which cannot deceive, by their own acts. Nor is it difficult to trace the operation by which it is effected. The very acts of Congress imposing burdens

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on them, as consumers, give them the means, through the monopoly which it affords the manufacturers in the home market, not only of indemnifying themselves for the increased price on the imported articles which they consume, but in a great measure of commanding the industry of the rest of the Union. The argument urged by them for the adoption of the system, and with much success is, that the price of property and products in the manufacturing States must be thereby increased, which clearly proves the beneficial operation of the system on them, It is by this very increase of price, which must be paid by their fellow citizens of the South, that the indemnity to the manufacturers is effected ; and by means of this the fruits of our toil and labour, which on every principle of justice ought to belong to ourselves, are transferred from us to them. The maxim that the consumers pay, strictly applies to us. We are mere consumers, and destitute of all means of transferring the burden from ourselves to others. We may be assured, that the large amount paid into the treasury, under the duties on imports, is really derived from the labor of some portion of our citizens. The government has no mines. Some one must bear the burden of its support. This unequal lot is ours. We are the serfs of the system, out of whose labor is raised, not only the money that is paid into the Treasury, but the funds out of which are drawn the rich reward of the manufacturer and his associate in interest. Their encour agement is our discouragement. The duty on imports, which is mainly paid out of our labour, gives them the means of selling to us, at a higher price, while we cannot, to compensate the loss, dispose of our products at the least advance. It is then not a subject of wonder, when properly understood, that one section of country, though blessed by a kind Providence with a genial sun and prolific soil, from which spring the richest products, should languish in poverty and sink into decay; while the rest of the Union, though less fortunate in natural advantages, is flourishing in prosperity beyond example.

The assertion, that the encouragement of the industry of the manufacturing states, is in fact discouragement to ours, was not made without due deliberation. It is susceptible of the clearest proof.

We cultivate certain great staples for the supply of the general market of the world; and they manufacture almost exclusively for the home market. Their object in the Tariff is to keep down foreign competition, in order to obtain a monopoly of the domestic market. The effect on us is to compel us to purchase at a higher price, both what we purchase from them and from others, without receiving a corresponding increase of price for what we sell. The price at which we can afford to cultivate, must depend on the price at which we receive our supplies. The lower the latter, the lower we may dispose of our products with profit; and in the same degree our capacity of meeting competition is increased; on the contrary, the higher the price of our supplies, the less the profit at the same price, and the less consequently the capacity for meeting competition. If, for instance, Cotton can be cultivated at ten cents a pound, under an increase of 45 per cent, for what is purchased in return, it is clear, we could cultivate it as profitably at 5½ cents, if the 45 per cent were not added, and our capacity of meeting the competition of foreigners in the general market of the world would be increased in the same proportion. If we can now, with the increased prices under the Tariff, retain our commerce, we would be able, with a reduction of 45 per cent in the prices of our supplies, to drive out all competition, and thus add annually to the consumption of our cotton at least 300,000 bales, with a corresponding increase of our annual income. The case, then,

fairly stated between us and the manufacturing states, is, that the Tariff gives them a prohibition against foreign competition in our own market, in the sale of their goods, and deprives us of the benefit of a competition of purchasers for our raw material. They who say that they cannot compete with foreigners at their own doors without an advantage of nearly fifty per cent, expect us to meet them abroad, under a disadvantage equal to their encouragement. But the oppression, great as it is to us, will not stop at this point. The trade between us and Europe has heretofore been a mutual exchange of products. Under the existing duties, the consumption of European fabrics must in a great measure cease in our country, and the trade must become, on their part, a cash transaction. But he must be ignorant of the principles of commerce, and the policy of Europe, particularly England, who does not see, that it is impossible to carry on a trade of such vast extent on any other basis but that of mutual exchange of products; and if it were not impossible, such a trade would not long be tolerated. We already see indications of the commencement of a commercial warfare, the termination of which cannot be conjectured, though *our* fate may easily be. The last remains of our great and once flourishing agriculture, must be annihilated in the conflict. In the first instance we will be thrown on the home market, which cannot consume a fourth of our products; and instead of supplying the world, as we should with a free trade, we shall be compelled to abandon the cultivation of three-fourths of what we now raise, and receive for the residue, whatever the manufacturers, (who will then have their policy consummated, by the entire possession of their market, both exports and imports,) may choose to give. Forced with an immense sacrifice of capital to abandon our ancient and favorite pursuit, to which our soil, climate, habits and peculiar labor are adapted, we should be compelled, without experience or skill, and with a population untried in such pursuits, to attempt to become the rivals instead of the customers of the manufacturing states. The result is not doubtful. If they, by superior capital and skill, should keep down successful competition on our part, we should be doomed to toil at our unprofitable agriculture, selling at the prices which a single and limited market might give. But on the other hand, if our necessity should triumph over their capital and skill, if, instead of raw cotton, we should ship to the manufacturing states, cotton yarn and cotton goods, the thoughtful must see, that it would immediately bring about a state of things which could not long continue. Those who now make war on our gains would then make it on our labour. They would not tolerate, that those, who now cultivate our plantations and furnish them with the material and the market for the products of their arts, should, by becoming their rivals, take bread out of the mouths of their wives and children. The committee will not pursue this painful subject; but as they clearly see that the system, if not arrested, must bring the country to this hazardous extremity, neither prudence nor patriotism would permit them to pass it by, without giving warning of an event so full of danger.

It has been admitted in the argument that the consumption of the manufacturing states, in proportion to population, was as great as ours. How they, with their limited means of payment, if estimated by the exports of their own products, could consume as much as we, with our ample exports, has been partially explained, but it demands a fuller consideration. Their population in round numbers may be estimated at 8,000,000, and ours at 4,000,000, while the value of their products exported compared to ours is as sixteen to thirty-seven millions of dollars. If to the

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aggregate of these sums, be added the profits of our foreign trade and navigation, it will give the amount of the fund out of which is annually paid the price of foreign articles consumed in this country. This profit, at least so far as it constitutes a portion of the fund out of which the price of foreign articles is paid, is represented by the difference between the value of the exports and imports, both estimated at our own ports, and taking the average of the last five years, amounts to about $4,000,000. The foreign trade of the country being principally in the hands of the manufacturing states, we will add this sum to their means of consumption, which will raise theirs to $20,000,000, and will place the relative means of consumption of the two sections, as twenty to 37,000,000 of dollars; while on the supposition of equal consumption according to population estimated in *federal* numbers, their consumption would amount to thirty-eight and ours to nineteen millions of dollars. Their consumption would thus exceed their capacity to consume, if judged by the value of their exports and the profits of their foreign commerce, by eighteen millions; while ours, judged the same way would fall short by the same sum. The inquiry which naturally presents itself on this statement is, how is this great change in the relative condition of the parties, to our disadvantage, effected. The committee will proceed to explain this. It obviously grows out of their connection with us. If they were entirely separate, without political or commercial connection, it is manifest, that the consumption of the manufacturing states of foreign articles could not exceed twenty millions, the sum at which the value of their exports, of domestic products, and the profit of their foreign trade, is estimated. It would in fact be much less, as the profits of foreign navigation and commerce which have been added to their means, depend almost exclusively on the great staples of the south, and would be deducted from their means if no connection existed. On the contrary, it is equally manifest, that the means of the south to consume the products of other countries, would not be materially effected, in the state supposed. Let us then inquire, what are the causes growing out of this connection, by which so great a change is made. They may be comprehended under three, the custom-house, the appropriations, and the monopoly of the manufacturers, under the Tariff system, all which are so intimately blended, as to constitute one system, which its advocates, by a perversion of all that is associated with the name, call the American System. The Tariff is the soul of the system. It has already been proved that our contribution through the Custom-House to the Treasury of the Union, amounts annually to $16,650,000, which leads to the inquiry, what becomes of the amount of the products of our labour, placed by the operation of the system at the disposal of Congress. One point is certain, a very small share returns to us, out of whose labour it is extracted. It would require much investigation to state with precision, the proportion of the public revenue disbursed annually in the southern and other states respectively; but the committee feel a thorough conviction on an examination of the annual appropriation acts, that a sum much less than two millions of dollars falls to our share of the disbursements, and that it would be a moderate estimate to place our contribution, above what we receive back, through all the appropriations, at fifteen millions; constituting, to that great amount, an annual, continued and uncompensated draft on the industry of the southern states, through the Custom-House alone. This sum deducted from the $37,000,000, the amount of our products annually exported, and added to the $20,000,000, the amount of the exports of the other states, with the profit of foreign trade and navigation, would reduce

our means of consumption to $22,000,000 and raise theirs to $35,000,000, still leaving $3,000,000 to be accounted for; this may be readily explained, by the operation of the remaining branch of the system, the monopoly afforded to the manufacturers in our own market, which empowers them to force their goods on us at a price equal to the foreign article of the same description, with the addition of the duty, thus receiving in exchange our products to be shipped on their account, and thereby increasing their means and diminishing ours in the same proportion. But this constitutes but a small part of our loss under this branch. In addition to the $37,000,000 of our products, which are shipped to foreign markets, a very large amount is annually sent to the other states for their own use and consumption. The article of cotton alone is estimated at 150,000 bales, which valued at $30 per bale, would amount to $4,500,000, and constitutes a part of this forced exchange.

Such is the process, with the amount in part of the transfer of our property annually to other sections of the country, estimated on the supposition that each section consumes of imported articles an amount in proportion to its population; but the committee are aware that they have rated our share of the consumption far higher than the advocates of the system have placed it. Some of them rate it as low as $5,000,000 annually, not perceiving by thus reducing ours and adding to that of the manufacturing states, in the same proportion, they demonstrably prove how oppressive the system is to us and gainful to them, instead of showing, as they suppose, how little we are affected by its operation. Our very complaint is, that we are not permitted to consume the fruits of our labour; but that through an artful and complex system, in violation of every principle of justice, they are transferred from us to others. It is indeed wonderful, that those who profit by our loss, (blinded as they are by self-interest,) never thought to enquire, when reducing our consumption as low as they have, what became of the immense amount of the product of our industry, which was annually sent out in exchange with the rest of the world; and if *we* did not consume its proceeds, *who* did, and by what means. If, in the ardent pursuit of gain, such a thought had occurred, it would seem impossible that all the sophistry of self-interest, delusive as it is, could disguise from their view our deep oppression, under the operation of the system. Your committee do not intend to represent, that the commercial connection between us and the manufacturing states is wholly sustained by the Tariff system. A great, natural and profitable commercial communication would exist between us without the aid of monopoly on their part, which with mutual advantage, would transfer a large amount of their products to us, and an equal amount of ours to them, as the means of carrying on their commercial operations with other countries. But even this legitimate commerce is made unequal and burthensome by the Tariff system, which by raising the price of capital and labour in the manufacturing states, raises in a corresponding degree the price of all articles in the same quarter, as well those protected as those not protected. That such would be the effect, we know has been much urged in argument, to reconcile all classes in those states to the system, and with such success, as to leave us no room to doubt its correctness; and yet, such are the strange contradictions in which the advocates of an unjust cause must ever involve themselves, when they attempt to sustain it by reason, that the very persons who urge the adoption of the system in one quarter by holding out the temptation of high prices for *all* they make, turn round and gravely inform us that its tendency is to depress and not to advance prices. The capitalist, the farmer, the wool-grower, the me-

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chanic and labourer in the manufacturing states, are all to receive higher rates, while we who consume, are to pay less for the products of their labour and capital. The obvious absurdity of these arguments leaves no room to doubt that those who advance them, are conscious that the proof of the partial and oppressive operation of the system, is unanswerable, if it be conceded that we pay in consequence of it, higher prices for what we consume. If it, were possible to meet that conclusion on other grounds, it could not be that men of sense would venture to encounter such palpable contradictions; for so long as the wages of labour and the rate of interest constitute the principal elements of price, as they ever must, the one or the other argument, that addressed to us or that to the manufacturing states, must be false. But in order to have a clear conception of this important point, the committee propose to consider more fully the assertion, that it is the tendency of high duties, by affording protection, to reduce instead of increasing prices; and if they are not greatly mistaken, it will prove, on examination, to be utterly erroneous. Before entering into the discussion, and in order to avoid misapprehension, the committee will admit that it is perhaps possible for a country to find itself in such a situation in regard to its manufacturing capacities, that the interposition of the Legislature, by encouraging their developement, may effect a permanent reduction of prices—but a comparison of the elements which constitute price here, and in England, will demonstrate that such a result cannot take place in this country.

In the United States, the wages of labour are one hundred and fifty per cent higher than in England. The profits of capital are one hundred per cent higher—while the price of the raw materials is higher in England only by the cost of the freight, which is certainly not above twenty five per cent. Combining these elements in their due proportion, and making every plausible allowance in favor of our own manufactures, and the result will be, that the manufactured article here must cost more than eighty per cent higher than the same article in England. The circumstances of the country, therefore, are not such as to permit us to calculate on a reduction of prices, as the result of the protecting system—but an enhancement of them by the erection of an artificial monopoly. It is therefore clearly our interest that such a monopoly should not be created, and that our market should afford a free open competition to all the world. The effect would be a reduction of price on all we consume.

Having answered the argument in the abstract, the committee will not swell their report by considering the various instances which have been quoted to shew that prices have not advanced since the commencement of the system. We know that they would instantly fall nearly fifty per cent if the duties were removed, and that is sufficient for us to know. Many and conclusive reasons might be urged to show why prices have declined, since the period referred to; the fall of the price of the raw materials; the increase of capital and competition; the effects of the return of peace; the immense reduction in the circulating medium by subtracting from circulation a vast amount of paper, both in this country and in Europe; the improvements in the mechanical arts; and the great improvements in the use of steam, and in the art of spinning and weaving.

We are told by those who pretend to understand our interests better than we do ourselves, that excess of production, and not the tariff, is the evil that afflicts us; and that our true remedy is a reduction of the quantity of cotton, rice and tobacco which we raise, and not a repeal

of the tariff. They assert that low prices are necessary consequences of excess of supply, and that the only proper correction is in diminishing the quantity. We should feel more disposed to respect the spirit in which the advice is offered, if those from whom it comes accompanied it with the weight of their example. They also complained much of low prices, but instead of diminishing the supply as a remedy, they demanded an enlargement of their market by the exclusion of all competition in the home market. *Our market is the world;* and as we cannot imitate their example by enlarging it for our products to the exclusion of others, we must decline to follow their advice; which in truth, instead of alleviating, would greatly increase our embarrassment. We have no monopoly in the supply of our products. Three fourths of the globe may produce them. Should we reduce our production to raise prices, others stand ready, by increasing theirs, to take our place; and instead of raising prices, we should only diminish our share of the supply. We are thus compelled to produce, be the price what it may, under the penalty of losing our market. Once lost, it may be lost forever. And lose it we must, if we continue to be compelled as we now are, on the one hand by the general competition of the world to sell low, and on the other, by the tariff to buy high. We cannot withstand this double action. Our ruin must follow. In fact, our only permanent and safe remedy is, not the rise in the price of what we sell, from which we can receive no aid from our government, but in a reduction in the price of what we buy; which is prevented by the interference of the government. Give us a free and open competition in our own market, and we fear not to encounter like competition in the general markets of the world. If, under all our discouragements by the acts of our own government, we are still able to contend with these against the world, can it be doubted if the impediment were removed we should force out all competitors, and thus also enlarge our market, not by the oppression of our fellow citizens of the other states, but by our industry, enterprize and natural advantages.

But while the system prevents this great enlargement of our foreign market, and endangers what we have left, its advocates attempt to console us by the growth of the home market for our products, which, according to their calculation, is to compensate us amply for all our losses; though in the leading article of our products, cotton, the home market now consumes but a sixth, and with an absolute prohibition would not consume more than a fifth. In the other articles, rice and tobacco, it is even much less.

But brilliant prospects are held out of a great export trade in cotton goods, which we are told is to demand an immense amount of the raw material. To what countries are the goods to be shipped? Not to Europe, for there we will meet prohibition for prohibition; not to the southern portion of this continent, for already they have been taught to imitate our prohibitory policy. The most sanguine will not expect extensive or profitable markets in the other portions of the globe. But admitting that no other impediment existed, our system itself is an effectual barrier against extensive exports of our manufactured articles. The very means which secures the domestic market, must lose the foreign. High prices are an effectual stimulus, when enforced by a monopoly, as in our own market, but they are fatal to competion in the open and free market of the world. Besides, when manufactured articles are exported, they must follow the same law to which the products of the soil are subject, when they are also exported. They

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will be sent out in order to be exchanged with the products of other countries; and if these products be taxed on their introduction, as a back return, it has been demonstrated that like all other taxes on exchange, it must be paid by the producer. The nature of the operation will be seen, if it be supposed, in their exchange with us, instead of receiving our products free of duty, the manufacturers had to pay forty five per cent on the back return of the cotton and other products, which they receive from us in exchange. If to these insuperable impediments to a large export trade, be added, that our country rears the products of almost every soil and climate, and that scarcely an article that can be imported, but what may come in competition with some of the products of our arts or our soil, and consequently ought to be excluded on the principles of the system, it must be apparent that the system itself, when perfected, will essentially exclude all exports, unless we should charitably export for the supply of the wants of others, without the expectation of a return. The loss of the exports, and with it the imports also, must in truth be the end of the system. If we export, we must import, and the most simple and efficient system to secure the home market, would in fact be to prohibit exports; and as the constitution only prohibits *duties* on exports, and as *duties are not prohibition*, we may yet witness this modification of the American system.

The committee deemed it more satisfactory to explain the operation of the system on the southern states generally, than its peculiar operation on this. In fact they had not the data, had they the inclination, to separate the oppression under which this state labors, from that of the other staple states. The fate of one must be that of all.

The committee have considered the question in its relative effects on the staple and manufacturing states, comprehending under the latter all the states who advocate the Tariff system. It is not for them to determine whether all those states have equal interest in its continuance. It is manifest that their situation is very different. While in some the manufacturing interest wholly prevails, others are divided between that and the commercial and navigating interest, and in a third, the agricultural interest greatly predominates; as is the case with all the western states. It is difficult to conceive what real interest the last can have in the system. They manufacture but little, and must consequently draw their supplies principally from abroad or from the manufacturing states, and, in either case, must pay the increased price in consequence of the duties, while at the same time the tariff must necessarily diminish, if not destroy, their trade with us. From the nature of our commercial connexion with them our loss must precede theirs, but theirs will with certainty follow, unless compensation for the loss of our trade can be found somewhere in the system. Its authors have informed us that it consists of two parts, of which *prohibition* is the essence of one, and *appropriation* of the other. In both capacities, it impoverishes us, and in both, enriches the manufacturing states. The agricultural states of the west are differently affected. As a protective system, they lose in common with us; and it will remain for them to determine, whether an adequate compensation can be found in *appropriation*, for the steady and rich return which a free exchange of the produce of their fertile soil with the staple states must give, provided the latter be left in full possession of their natural advantages.

It remains to be considered, in tracing the effects of the system, whether the gains of one section of the country will be equal to the

loss of the other. If such were the fact—if all we lose be gained by the citizens of the other section, we would at least have the satisfaction of thinking, that however unjust and oppressive, it was but a transfer of property, without diminishig the wealth of the community. Such, however, is not the fact, and to its other mischievons consequences, we must add, that it destroys much more than it transfers. Industry cannot be forced out of its natural channel, without loss. The exact amount of loss, from such intermeddling, may be difficult to ascertain, but it is not therefore the less certain. The committee will not undertake to estimate the millions which are annually lost to our country under the existing system; but some idea may be formed of its magnitude, by stating that it is at least equal to the difference between the profits of our manufactures and the duty imposed for their protection, when it is not prohibitory. The lower the profit the higher the duty, if not prohibitory, the greater the loss. If, with these certain data, the evidence reported by the committee on manufactures at the last session of congress, be examined, a correct opinion may be formed of the extent of the loss of the country, provided the manufacturers have fairly stated the case. With a duty of almost fifty per cent on the leading articles of consumption (if we are to credit the testimony reported,) the manufacturers did not receive generally a profit equal to the legal rate of interest, which would give a loss of about forty per cent on their products. It is different with the foreign articles of the same description. On such, at least, the country loses nothing. There the duty passes into the treasury, lost indeed to the Southern planters, out of whose labor directly or indirectly it must for the most part be paid; but transferred through appropriations; and well may its advocates affirm, that *they* constitute an essential feature of the American system. Let this conduit, through which it is so profusely supplied, be intercepted, and we feel confident, that scarcely a state, except those really manufacturing, would tolerate its burden. A total prohibition of importation, by destroying the revenue and thereby the means of making appropriations, would in a short period destroy it. But the excess of its loss over its gains, leads to the consolatory reflection, that its abolition would relieve us much more than it would embarrass the manufacturing states. We have suffered too much to desire to see others afflicted, even for our relief, when it can possibly be avoided. We should rejoice to see our manufactures flourish on any constitutional principle consistent with justice and the public liberty. It is not against them, but the means by which they have been forced to our ruin, that we object. As far as a moderate system, founded on import for revenue, goes, we are willing to afford protection, though we clearly see that even under such a system, the national revenue would be based on our labours, and be paid by our industry. With such constitutional and moderate protection the manufacturer ought to be satisfied. His loss would not be so great as might be supposed. If low duties would be followed by lower prices, they would also diminish the cost of manufacturing, and thus the reduction of profit would be less in proportion than the reduction on the prices of the article. Be that, however, as it may, the general government cannot proceed beyond this point of protection, consistently with its powers, and with justice to the whole. If the manufacturing states deem farther protection necessary, it is in their power to afford it to their citizens within their own limits, against foreign competition, to any extent that they may judge expedient. The constitution authorizes them to lay an impost duty, with the consent of congress, which doubtless would be

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given; and if this be not sufficient, they have the additional power of giving a direct bounty for their encouragement, which the ablest writers on the subject concede to be the least burdensome and most efficient mode, if indeed encouragement be in any case expedient. Thus those who are to be benefited will bear the burden, as they ought; and those who believe that it is wise and just to protect manufactures by legislation, may have the satisfaction of doing it at their own expense, and not at the expense of the citizens of other States, who entertain precisely the opposite opinion.

The committee having presented its views on the partial and oppressive operation of the system, will now proceed to discuss the next position which they proposed—That its tendency is to corrupt the government and destroy the liberties of the country.

If there be a political proposition universally true, one which springs directly from the nature of man, and is independent of circumstances, it is, that irresponsible power is inconsistent with liberty and must corrupt those who exercise it. On this great principle our political system rests. We consider all powers as delegated from the people and to be controuled by those who are interested in their just and proper exercise; and our governments, both state and general, are but a system of judicious contrivances to bring this fundamental principle into fair practical operation. Among the most permanent of these is the responsibility of representatives to their constituents, through frequent periodical elections. Without such a check on their powers, however clearly they may be defined and distinctly prescribed, our liberty would be but a mockery. The government, instead of being devoted to the general good, would speedily become but the instrument to aggrandize those who might be entrusted with its administration. On the other hand, if laws were uniform in their operation; if that which imposed a burden on one, imposed it alike on all; or that which acted beneficially for one, should act so for all, the responsibility of representatives to their constituents, would alone be sufficient to guard against abuse and tyranny, provided the people be sufficiently intelligent to understand their interests, and the motives and conduct of their public agents. But if it be supposed that from diversity of interest in the several classes of the people and sections of the country, laws act differently, so that the same law, though couched in general terms and apparently fair, shall in reality transfer the power and prosperity of one class or section to another; in such case, responsibility to constituents, which is but the means of enforcing the fidelity of representatives to them, must prove wholly insufficient to preserve the purity of public agents, or the liberty of the country. It would, in fact, be inapplicable to the evil. The disease would be in the community itself; in the constituents, not in the representatives. The opposing interests of the community would engender necessarily opposing hostile parties, organized on this very diversity of interest; the stronger of which, if the government provided no efficient check, would exercise unlimited and unrestrained power over the weaker. The relations of equality between them would thus be destroyed, and in its place there would be substituted the relation of sovereign and subject, between the stronger and the weaker interest, in its most odious and oppressive form. That this is a possible state of society even when the representative system prevails, we have high authority. Mr. Hamilton, in the 51st No. of the Federalist, says, "It is of the greatest importance in a republic not only to guard society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests neces-

sarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure." Again, "In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may be said as truly to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger." We have still higher authority, the unhappy existing examples, of which we are the victims. The committee have labored to little purpose if they have not demonstrated, that the very case which Mr. Hamilton so forcibly describes, does now exist in our country, under the name of the "*American System*;" which if not speedily arrested must be followed by all the consequences that never fail to spring from the exercise of irresponsible power. On the great and vital point, the industry of the country, which comprehends nearly all the other interests, two great sections of the Union are opposed. We want free trade; they, restrictions. We want moderate taxes, frugality in the government, economy, accountability, and a rigid application of the public money, to the payment of the public debt, and the objects authorized by the constitution; in all these particulars, if we may judge by experience, their views of their interest are the opposite. They act and feel on all questions connected with the American System, as sovereigns; as those always do who impose burdens on others for their own benefit; and we, on the contrary, like those on whom such burdens are imposed. In a word, to the extent stated the country is divided and organized into two great opposing parties, one sovereign and the other subject; marked by all the characteristics which must ever accompany that relation, under whatever form it may exist. That our industry is controuled by the many, instead of one, by a majority in Congress elected by a majority in the community having an opposing interest, instead of hereditary rulers, forms not the slightest mitigation of the evil. In fact, instead of mitigating, it aggravates. In our case one opposing branch of industry cannot prevail without associating others, and thus instead of a single act of oppression we must bear many. The history of the woollens' bill will illustrate the truth of this position. The woollen manufacturers found they were too feeble to enforce their exactions alone, and of necessity resorted to the expedient, (which will ever be adopted in such cases,) of associating their interests till a majority was formed; the result of which was in this case, that instead of increased duties on woollens alone, which would have been the case if that interest alone governed us, we have to bear increased duties on more than a dozen of the leading articles of consumption. It would be weakness to attempt to disguise the fact, on a full knowledge of which, and of the danger which it threatens, the hope of deriving some means of security depends; that different and opposing interests do, and must ever exist in this country, against the danger of which *representation* affords not the slightest protection. Laws, so far from being uniform in their operation, are scarcely ever so. It requires the greatest wisdom and moderation to form over any country, a system of equal laws; and it is this very opposition of interest, which in all associations of men for common purposes, be they public or private, constitutes the main difficulty in forming and administering free and just governments. Liberty comprehends the idea of *responsible power*, that those who make and execute the laws should be controuled by those on whom they operate; that the governed should govern. Thus to prevent rulers from abusing their trust, constituents must controul them through elections; and so to prevent the major from oppressing the minor interests of society, the constitution must provide (as the committee hope to prove

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it does,) a check founded on the same principle, and equally efficacious. In fact the abuse of delegated power, and the tyranny of the greater over the lesser interests of society, are the two great dangers, and the only two, to be guarded against; and if *they* be effectually guarded, liberty must be *eternal*. Of the two, the latter is the greater danger, and most difficult to check. It is less perceptible. Every circumstance of life teaches us the liability of delegated power to abuse. We cannot appoint an agent without being admonished of the fact; and therefore it has become well understood, and is sufficiently guarded against in our political institutions. Not so with the other and greater danger. Though it exists in all associations, the law, the courts, and the government itself, are checks to its extreme abuse in most cases of private and subordinate companies, which prevents them from displaying their real tendency. But let it be supposed that there was no paramount authority, no court, no government to controul, what sober individual, who intended to act honestly, would place his property in joint stock with any number of individuals, however repectable, to be disposed of by the unchecked will of the majority, whether acting in a body as stockholders, or through representation by a direction? Who does not see, that sooner or later, a major and a minor interest would spring up, and that the former would in a short time monopolize all the advantages of the concern. And what is government itself but a joint stock company, which comprehends every interest, and which, as there can be no higher power to restrain its naturaul operation, if not checked by its peculiar organization, must follow the same law? The actual condition of man in every country, at this and all preceding periods, attests the truth of the remark. No government based on the naked principle, that the majority ought to govern, however true the maxim in its proper sense and under proper restrictions, ever preserved its liberty, even for a single generation. The history of all has been the same, injustice, violence and anarchy, succeeded by the government of one, or a few, under which the people seek refuge from the more oppressive despotism of the majority. Those governments only which provide checks, which limit and restrain within proper bounds the power of the majority, have had a prolonged existence, and been distinguished for virtue, power and happiness. Constitutional government, and the government of a majority, are utterly incompatible, it being the sole purpose of a constitution to impose limitations and checks upon the majority. An unchecked majority is a despotism—and government is free, and will be permanent in proportion to the number, complexity and efficiency of the checks, by which its powers are controuled.

The committee entertain no doubt, that the present disordered state of our political system originated in the diversity of the interests of the several sections of the country. This very diversity the Constitution itself recognizes; and to it owes one of its most distinguished and peculiar features, the division of the sovereign power between the state and general government. Our short experience before the formation of the present government had conclusively shewn, that while there were powers which were in their nature local and peculiar, and which could not be exercised by all, without oppression to some of the parts; so also there were those which in their operation necessarily affected the whole, and could not therefore be exercised by any one of the parts, without affecting injuriously the others. To a certain extent we have a community of interest, which can only be justly and fairly supervised by concentrating the will and authority of the whole in one general government; while, at the same time, the states have distinct and separate interests, which

cannot be consolidated in the general power, without injustice and oppression. Thence the division of the sovereign power; and it is upon this distribution of power, that the whole system of our government rests. In drawing the line between the general and state governments, the great difficulty consisted in determining correctly to which the various political powers belonged. This difficult duty was, however, performed with so much success, that, to this day, there is an almost uniform acquiescence in the correctness with which it was executed. It would be extraordinary if a system thus based, with profound wisdom, on the diversity of geographical interests, should make no provision against the danger of their conflict. The framers of our constitution have not exposed themselves to the imputation of such weakness. When their work is fairly examined, it will be found, that they have provided, with admirable skill, the most effective remedy, and that if it has not prevented the approach of the dangers, the fault is not theirs, but ours, in neglecting to make the proper application of it. The powers of the general government are particularly enumerated, and specifically delegated; all others are expressly reserved to the states and the people. Those of the general government are intended to act uniformly on all the parts, the residue are left to the states, by whom alone, from the nature of these powers, they can be justly and fairly exercised.

Our system then consists of two distinct and independent sovereignties. The general powers conferred on the general government, are subject to its sole and separate controul, and the States cannot, without violating the constitution, interpose their authority to check, or in any manner counteract its movements, so long as they are confined to its proper sphere; so also the peculiar and local powers reserved to the States, are subject to their exclusive controul, nor can the general government interfere with them, without on its part also violating the constitution. In order to have a full and clear conception of our institutions, it will be proper to remark, that there is in our system a striking distinction between the government and the sovereign power. Whatever may be the true doctrine in regard to the sovereignty of the States individually, it is unquestionably clear that while the government of the Union is vested in its legislative, executive and political departments, the actual sovereign power resides in the several States, who created it, in their separate and distinct political character. But by an express provision of the constitution it may be amended or changed, by three fourths of the States; and each State, by assenting to the constitution with this provision, has surrendered its original rights as a sovereign, which made its individual consent necessary to any change in its political condition, and has placed this important power in the hands of three-fourths of the States; in which the sovereignty of the union under the constitution does now actually reside. Not the least portion of this high sovereign authority, resides in Congress or any of the departments of the general government. They are but the creatures of the constitution, appointed but to execute its provisions, and therefore, any attempt in all or any of the departments to exercise any power definitely, which in its consequences may alter the nature of the instrument or change the condition of the parties to it, would be an act of the highest political usurpation. It is thus, that our political system, recognizing the opposition of geographical interests in the community, has provided the most efficient check against its dangers. Looking to facts and not mere hypothesis, the constitution has made us a community only to the extent of our common interest, leaving the States distinct and independent, as to their peculiar interests, and has drawn the line of sep-

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aration with consummate skill. The great question, however, is, what means are provided by our system for the purpose of enforcing this fundamental provision. If we look to the practical operation of the system, we will find, on the side of the States, not a solitary constitutional means resorted to, in order to protect their reserved rights against the encroachment of the general government, while the latter has from the beginning, adopted the most efficient, to prevent that of the States on their authority. The 25th section of the Judiciary Act, passed in 1789, provides an appeal from the States Courts to the Supreme Court of the United States, in all cases in the decision of which the construction of the Constitution, the laws of Congress, or treaties of the United States, may be involved; thus giving to that high tribunal the right of final interpretation, and the power in reality of nullifying the Acts of the State Legislatures, whenever in their opinion they may conflict with the power delegated to the general government. A more ample and complete protection against the encroachments of the States by their Legislatures cannot be imagined; and for this purpose, this high power may be considered indispensable and constitutional; but by a strange misconception of the nature of our system, in fact, of the nature of government, it has been regarded not only as affording protection to the general government against the States, but also to the States against the general government; and as the only means provided by the Constitution of restraining the State and general government within their respective spheres; and consequently of deciding on the extent of the powers of each, even where a State in its highest sovereign capacity, is at issue with the general government on the question whether a particular power be delegated, or not. Such a construction of the powers of the Federal Court, which would raise one of the departments of the general government above the sovereign parties who created the Constitution, would enable it in practice to alter at pleasure the relative powers of the States and General Government. This most erroneous and dangerons doctrine, in regard to the powers of the Federal Court, has been so ably refuted by Mr. Madison in his report to the Virginia Legislature in 1800, that the committee avail themselves at once of his argument and authority. Speaking of the rights of the State to interpret the constitution for itself in the last resort, he says: that it has been objected that the judicial authority is to be regarded as the sole expositor of the Constitution; on this objection it might be observed—"1st. That there may be instances of usurped power," (the case of the Tariff is a striking illustration of its truth) "which the forms of the Constitution could never draw within the controul of the judicial department; *secondly*, that if the decision of the judiciary, be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the constitution before the judiciary, must be equally authoritative and final with the decision of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions, dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the judicial department also may exercise, or sanction, dangerous powers beyond the grant of the Constitution, and consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another—by the judiciary as well as by the Executive, or the Legislature."

"However true, therefore, it may be, that the judicial department is in all questions submitted to it, by the forms of the Constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government, not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever and beyond the possible reach of any rightful remedy, the very constitution which all were constituted to preserve."

Although this constitutional mode of restraining the encroachments of the general government, was thus early and clearly pointed out by Mr. Madison, an effort has been made to substitute for it what has been called a rigid rule of construction, which would inhibit the exercise of all powers not plainly delegated, or that were not obviously necessary and proper as means to their execution. A government like ours, of divided powers, must necessarily give great importance to a proper system of construction, but it is perfectly clear that no system of the kind, however perfect, can prescribe bounds to the encroachment of power. They constitute in fact, but an appeal by the minority to the justice of the majority, and if such appeals were sufficient to restrain the avarice and ambition of those who are invested with power, then would a system of technical construction be sufficient. But on such a supposition, reason and justice might alone be relied on, without the aid of any constitutional or artificial restraint whatever. Universal experience, in all ages and countries, however, teaches that power can only be met by power and not by reason and justice, and that all restrictions on authority, unsustained by an equal antagonist power, must forever prove wholly insufficient in practice. Such also has been the decisive proof of our own short experience. From the beginning, a great and powerful minority gave every force of which it was susceptible, to construction, as a means of restraining a majority of Congress to the exercise of its proper powers; and though that original minority, through the force of circumstances, has had the advantage of becoming a majority, and to possess, in consequence, the administration of the general government, during the greater portion of its existence, yet we this day witness, under these most favourable circumstances, an extension of the powers of the general government, in spite of mere construction, to a point so extreme as to leave few powers to the States worth possessing. In fact, that very power of construction, on which reliance is placed to preserve the rights of the States, has been wielded, as it ever will and must be, if not checked, to destroy those rights. If the minority has a right to select *its* rule of construction, a majority will exercise the same, but with this striking difference, that the power of the former will be a mere nullity, against that of the latter. But that protection, which the minor interest ever fails to find in any technical system of construction, where alone in practice it has heretofore been sought, it may find in the reserved rights of the States themselves, if they be properly called into action; and there only will it ever be found of sufficient efficacy. The constitutional power to protect their rights as members of the confederacy, results, necessarily, by the most simple and demonstrable arguments, from the very nature of the relation subsisting between the States and general government. If it be conceded, as it must by every one who is the least conversant with our institutions, that the sovereign power is divided between the States and general govern-

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ment, and that the former hold their reserved rights, in the same high sovereign capacity, which the latter does its delegated rights; it will be impossible to deny to the States the right of deciding on the infracton of their rights, and the proper remedy to be applied for the correction. The right of judging, in such cases, is an essential attribute of sovereignty, of which the States cannot be divested, without losing their sovereignty itself; and being reduced to a subordinate corporate condition. In fact, to divide power, and to give to one of the parties the exclusive right of judging of the portion allotted to each, is in reality not to divide at all; and to reserve such exclusive right to the general government, (it matters not by what department it be exercised) is in fact to constitute it one great consolidated government, with unlimited powers, and to reduce the States to mere corporations. It is impossible to understand the force of terms, and to deny these conclusions. The opposite opinion can be embraced only on hasty and imperfect views of the relation existing between the States and the general government. But the existence of the right of judging of their powers, clearly established from the sovereignty of the States, as clearly implies a veto, or controul on the action of the general government, on contested points of authority; and this very controul is the remedy, which the constitution has provided to prevent the encroachment of the general government on the reserved rights of the States; and by the exercise of which the distribution of power between the general and State governments may be preserved forever inviolate, as is established by the constitution: and thus afford effectual protection to the great minor interest of the community, against the oppression of the majority.

Nor does this important conclusion stand on the deduction of reason alone; it is sustained by the highest cotemporary authority. Mr. Hamilton, in the number of the Federalist already cited, remarks, "that in a single republic all the powers surrendered by the people, are submitted to the administration of a single government; and usurpations are guarded against by a division of the government into districts and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments; and then the portion allotted to each, sub-divided among districts and separate departments. Hence a double security arises to the rights of the people. The different governments will controul each other, at the same time that each will be controuled by itself."

He thus clearly affirms the controul of the States over the general government, which he traces to the division of the sovereign power under our political system, and by comparing this controul to the veto which the several departments in most of our constitutions respectively exercised over the acts of each other, clearly indicates it as his opinion, that the controul between the State and general government is of the same character. Mr. Madison is still more explicit; in his report already alluded to, he says: "The resolution having taken this view of the Federal compact, proceeds to infer, 'that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.' It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges

in the last resort, whether the bargain made has been pursued or violated. The constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the constitution, that it rests on this legitimate and solid foundation. The States then being parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated, and, consequently that as the parties to it, they must themselves decide in the last resort, such questions as may be of sufficient magnitude to require their interposition." To these the no less explicit opinion of Mr. Jefferson may be added, who, in the Kentucky resolutions on the same subject, states that, "the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers: but that as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Time and experience confirmed his opinion on this all important point. This illustrious citizen, nearly a quarter of a century afterwards, in the year 1821 expressed himself in this emphatic manner. "It is a fatal heresy," he says, "to suppose that either our state governments are superior to the federal, or the federal to the state; neither is authorized, literally, to decide what belongs to itself, or its co-partner in government;" "in differences of opinion between their different sets of public servants, the appeal is to neither, but to their employers, peaceably assembled by their representatives in Convention." If to these authorities, which so explicitly affirm the right of the states in their sovereign capacity, to decide both on the infraction of their rights, and the remedy, there be added the solemn decisions of the Legislatures of two leading states, Virginia and Kentucky, and the implied sanction of a majority of the states in the important political revolution which shortly followed, and brought Mr. Jefferson into power on this very ground, it will be scarcely possible to add to the weight of authority, by which this fundamental principle in our system is sustained.

The committee having thus established the constitutional right of the states to interpose in order to protect their powers, it cannot be necessary to bestow much time, in order to meet possible objections; particularly as they must be raised, not against the soundness of the argument by which the position is sustained, which they deem unanswerable, but against apprehended consequences, which, even if true, would not be so much an objection to the conclusion of the committee, as to the constitution itself, but which they are persuaded, will be found, on investigation, destitute of solidity. Under these impressions the committee propose to discuss the objections with all possible brevity.

It is objected in the first place, that the right of the states to interpose, rests on mere inference without any express provision in the constitution, and that it is not to be supposed if the constitution contemplated the exercise of a power of such high importance, that it would have been left to inference alone. In answer, the committee would ask those who raise the objection, if the power of the Supreme Court to declare a law unconstitutional, is not among the very highest and most important, that can be exercised by any department of the government, and where they can find any express provision to justify its exercise? Like the power in question, *it* also rests on mere infer-

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ence, but an inference so clear, that no express provision could render it more certain. The simple facts, that the Judges must decide according to Law, and that the Constitution is paramount to the Law, imposes a necessity on the Court to declare the latter void, whenever it comes into conflict with the former; so from the fact, that the sovereign power is divided, and that the states hold their proportion in the same sovereign capacity with the general government, by like necessity, then, is the right of judging of the infraction of their sovereignty, as well as of the remedy. The deduction in the one case is not clearer than the other; but if we refer to the nature of our constitution, the right of the states stands on stronger grounds than that of the court.

In the distribution of powers between the general and state governments, the constitution professes to enumerate those assigned to the former, in whatever department they may be vested; while the powers of the latter are reserved in general terms, without an attempt at enumeration. It therefore raises a presumption against the powers of the court to declare a law unconstitutional, that the power is not enumerated among those belonging to the judiciary. While the omission to enumerate amongst the powers of the states, that to interfere and protect their rights, being strictly in accord with the principles on which the framers formed the constitution, raises not the slightest presumption against its existence.

It is next objected to the power that it places the minority over the majority, in opposition to the whole theory of our government, and that its consequences must be feebleness, anarchy, and finally disunion.

It is impossible to impose any limitation on sovereign power, without encountering from its supporters this very objection; and we accordingly find that the history of every country which has attempted to establish free institutions, proves, that on this point the opposing parties, the advocates of power and of freedom, have ever separated. It constitutes the essence of the controversy between the Patricians and Plebeians of the Roman republic; of the Tories and Whigs in England; of the Ultras and Liberals in France; and finally of the Federalists and Republicans in our own country, as illustrated by Mr. Madison's Report; and if it were proposed to give to Russia or Austria a representation of the people, it would form the point of controversy, between the imperial and popular parties. It is in fact not at all surprising, that to a people unacquainted with the nature of liberty, and inexperienced in its blessings, all limitation on the supreme power should appear incompatible with its nature, and as tending to feebleness and anarchy.

Nature has not permitted us to doubt the necessity of supreme power in every community. All see and feel it, and are instinctively impelled to its support; but it requires some effort of reason to perceive, that if not controuled, such power must necessarily lead to abuse; and still higher efforts to understand that it may be checked without destroying its supremacy. With us, however, who know from our own experience and that of other free nations, the truth of both these positions; and also that power can be rendered useful and secure by being properly checked, it is indeed strange that any intelligent citizen should consider limitation in sovereignty, as incompatible with its nature; or should fear danger from any check properly lodged, which may be necessary to secure any distinct and important interest. That there are such interests represented by the states, and that on principle the states alone can protect them, has been proved; and it only remains in order to meet

the objection, to prove that for this purpose the states may be safely entrusted with the power. If the committee do not greatly mistake, it never has in any country, or under any institutions, been lodged where it was less liable to abuse. The great number by whom it must be exercised, a majority of the people of one of the states, the solemnity of the mode, the delay, the deliberation, are all calculated to allay excitement, to impress on the people of the state a deep and solemn tone, highly favorable to calm investigation. Under such circumstances, it would be impossible for a party to preserve a majority in the state, unless the violation of its rights be "palpable, deliberate, and dangerous." The attitude in which the state would be placed, in relation to a majority of the states; the force of public opinion which would be brought to bear on her; the deep reverence for the general government; the strong influence of that portion of her citizens who aspire to office or distinction in the Union; and above all, the local parties which must ever exist in the states, and which in this case must ever throw the powerful influence of the minority in the state, on the side of the general government, and would stand ready to take advantage of an error on the side of the majority. So powerful are these causes, that nothing but the *truth* and a *deep sense of oppression* on the part of the people of the state, will ever authorize the exercise of the power; and, if it should be attempted under other circumstances, those in power would be speedily replaced by others, who would make a merit of closing the controversy, by yielding the point in dispute. But in order to understand more fully, what its operation would be, we must take into the estimate the effect which a recognition of the power would have on the administration both of the general and state governments. On the former, it would necessarily produce, in the exercise of doubtful power, the most marked moderation. On the latter a feeling of conscious security would effectually prevent jealousy, animosity and hatred, and thus give scope to the natural attachment to our institutions. But withhold this protective power from the states, and the reverse of all these happy consequences must follow, which, however, the committee will not undertake to describe, as the living example of discord, hatred and jealousy, threatening anarchy and dissolution, must impress on every beholder a more vivid picture, than what they could possibly draw. The continuance of this unhappy state must end in the loss of all affection, leaving the government to be sustained by force instead of patriotism. In fact, to him who will duly reflect, it must be apparent, that where there are important, separate interests to preserve, there is no alternative but a veto or military force. If these deductions be correct, as cannot be doubted, then under that state of moderation and security, followed by mutual kindness, which must accompany the acknowlegement of the right, the necessity of exercising a veto would rarely exist; and the possibility of abuse on the part of the states, would almost be wholly removed. Its acknowledged existence would thus supercede its exercise. But suppose in this the committee to be mistaken, still there exists a sufficient remedy for the disease. As high as is the power of the states in their individual sovereign capacity, it is not the highest power known to our system. There is a still higher power, placed above all, by the express consent of all; the creating and preserving power, deposited in the hands of three-fourths of the United States, which under the character of the amending power, can modify the whole system at pleasure, and to the final decision of which it would be political heresy to object. Give then the veto to the states, and admit its lia-

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bility to abuse by them; and what is the effect, but to create the presumption against the constitutionality of the disputed powers exercised by the general government, which, if the presumption be well founded, must compel them to abandon it; but if not, the general government may remove it by invoking this high power to decide the question in the form of an amendment to the constitution. If the decision be favourable to the general government, a disputed constructive power will be converted into a certain and express grant. On the other hand, if it be adverse, the refusing to grant will be tantamount to inhibiting its exercise; and thus in either case, the controversy will be peaceably determined. Such is the sum of its effects. And ought not a sovereign state, in protecting the minor and local interests of the country, to have a power to compel a decision? Without it, can the system itself exist? Let us examine the case. To compel the state to appeal against the acts of the general government, by proposing an amendment to the constitution, would be perfectly idle. The very complaint is that a majority of the states, through the general government, by force of construction, urge powers not delegated, and by their exercise increase their wealth and power at the expense of a minority. How absurd then to compel one of the injured states to attempt a remedy by proposing an amendment to be ratified by three-fourths of the states, when there is, by supposition, a majority opposed to it. Nor would it be less absurd to expect the general government to propose an amendment, in order to settle the point disputed, unless compelled to that course by the state. On their part there can be no inducement. They have a more summary mode of assuming the power by construction. The consequence is clear. Neither would appeal to the amending power; the one because it would be useless; and the other because it could effect its object without it. Under the operation of this supreme controuling power to whose interposition no one can object, all controversy between the states and general government would be thus adjusted; and the constitution would gradually acquire by its constant interposition in important cases, all the perfection of which the work of men is susceptible. It is thus that the creative will become the preserving power; and we may rest assured, that it is no less true in politics than in divinity, that the power which creates can alone preserve, and that preservation is perpetual creation. Such will be the operation of the veto of the states.

If indeed it had the effect of placing the state over the general government the objection would be fatal. For if the majority cannot be trusted with the supreme power, neither can the minority; and to transfer it from the former to the latter, would be but the repetition of the old error of taking shelter under a monarchy or aristocracy, against the more oppressive tyranny of a majority in an ill-constructed republic. But it is not the consequence of proper checks to change places between the majority and the minority. It leaves the power controuled still supreme, as is exemplified in our political institutions, by the operation of acknowledged checks. The power of the judiciary to declare an act of Congress, or of a state legislature unconstitutional, is a powerful, and for its appropriate purpose an efficient one; but who, acquainted with the nature of our government, ever supposed it really vested (when confined to its proper object,) a supreme power in the Court over Congress or the State Legislatures? Such could be neither the intention nor its proper effect. The check was given to the Judiciary to protect the supremacy of the Constitution over the acts of Legislation, and not to set up a supreme power in the Courts. The Constitution has provided another

check, which will still further illustrate the nature of its operation. Among the various interests which exist under our complex system, that of large and small states are among the most prominent and among the most carefully guarded in the organization of our government. To settle the relative weight of the states in the system, and to secure to each the means of maintaining its proper political consequence in its operation, were amongst the most difficult duties in framing the Constitution. No one subject occupied greater space in the proceedings of the Convention. In its final adjustment, the large states had assigned to them a preponderating influence in the House of Representatives, by having there a weight proportioned to their members, but to compensate which, and to secure their political rights against this preponderance, the small states had an equality assigned them in the Senate, while, in the Constitution of the Executive branch, the two were blended. To secure the consequence allotted to each, as well as to insure due deliberation in legislation, a veto is allowed to each in the passage of bills; but it would be absurd to suppose, that this veto placed either above the other; or was incompatible with the portion of the sovereign power allotted to the House, the Senate or the President.

It is thus that our system has provided appropriate checks, with a veto, to ensure the supremacy of the Constitution over the laws, and to preserve the due importance of the states, considered in reference to large and small, without creating discord or weakening the beneficent energy of the government; and so in the division of sovereign authority between the general and state governments, and in granting an efficient power to the latter, to protect by a veto the minor against the major interests of the community, the framers of the Constitution acted in strict conformity with the principle which invariably prevails throughout the whole system whenever separate interests exist. They were in truth no ordinary men. They were wise and practical men, enlightened by history and their own enlarged experience, acquired in conducting our country through a most important revolution; and understood profoundly the nature of man and of government. They saw and felt that there existed in our nature the necessity of a government, which to effect the object of government must have adequate powers. They saw the selfish predominate over the social feelings, and that without a government with such powers, universal conflict and anarchy must prevail among the component parts of society: but they also clearly saw, that our nature remaining unchanged by change of condition, that unchecked power, from this very predominance of the selfish over the social feeling, which rendered government necessary, would of necessity lead to corruption and oppression on the part of those invested with its exercise. Thus the necessity of government and of checks originate in the same great principle of our nature, through which the very selfishness, which would impel those who have power, to desire more than their own, will also, with great energy, impel those on whom power may operate to demand their own; and in the balance of these opposing tendencies from different conditions, but originating in the same principle of action, the one impelling to excess, the other restraining within the bounds of moderation and justice, liberty and happiness must forever depend. This great principle guided the framers of the Constitution in constructing our political system. There is not an opposing interest throughout the whole that is not counterpoised. Have the rulers a separate interest from the people? To check its abuse, the relation of representative and constituent is created between them, through periodical elections, by which the fidelity of rulers to their

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trusts is secured. Have the states as members of the Union, distinct political interests in reference to their magnitude? Their relative weight is carefully settled, and each class has its appropriate means, with a veto to protect its political consequence. May there be a conflict between the Constitution and the laws, whereby the rights of citizens may be affected? To preserve the ascendency of the Constitution, a power is vested in the Supreme Court to declare the law unconstitutional in such cases. Is there in a geographical point of view separate interests? To meet this a peculiar organization is provided in the division of the sovereign power between the state and general governments? Is there danger growing out of this division, that the states may encroach on the general powers through the acts of their legislatures? To the Supreme Court is also assigned adequate power to check such encroachment. May the general government on the other hand encroach on the rights reserved to the states? To the states in their sovereign capacity is reserved the power to arrest such encroachment. And finally, may this power be abused by the states in interfering improperly with the powers delegated to the general government? There remains a still higher power created supreme over all, invested with the ultimate power over all interests, to enlarge, to modify or rescind at pleasure, whose interposition the majority may invoke and to oppose whose decision would be rebellion. On this the whole system rests.

That there exists a case which would justify the interposition of this State, and thereby compel the general governmet to abandon an unconstitutional power, or to make an appeal to the amending power to confer it by express grant, the committee does not in the least doubt; and they are equally clear in the existence of a necessity to justify its exercise, if the general government should continue to persist in its improper assumption of powers, belonging to the state; which brings them to the last point which they propose to consider. When would it be proper to exercise this high power? If they were to judge only by the magnitude of the interest, and urgency of the case, they would, without hesitation, recommend the exercise of this power without delay. But they deeply feel the obligation of respect for the other members of the confederacy, and of great moderation and forbearance in the exercise, even of the most unquestionable right, between parties who stand connected by the closest and most sacred political union. With these sentiments, they deem it adviseable, after presenting the views of the Legislature in this solemn manner, to allow time for further consideration and reflection, in the hope that a returning sense of justice on the part of the majority, when they come to reflect on the wrongs which this and other staple States have suffered and are suffering, may repeal the obnoxious and unconstitutional acts, and thereby prevent the necessity of interposing the sovereign power of this State.

The Committee is further induced at this time to take this course, under the hope that the great political revolution which will displace from power on the 4th of March next, those who acquired authority by setting the will of the people at defiance, and which will bring in an eminent citizen, distinguished for his services to his country, and his justice and patriotism, may be followed up under his influence with a complete restoration of the pure principles of our government.

But in thus recommending delay, the committee wish it to be distinctly understood, that neither doubts of the power of the State, nor apprehension of consequences, constitute the smallest part of their motives. They would be unworthy of the name of Freemen, of Americans, of

Carolinians, if danger, however great, could cause them to shrink from the maintenance of their constitutional rights; but they deem it preposterous to anticipate danger, under a system of laws, where a sovereign party to the compact which formed the government, exercises a power, which after the fullest investigation, she conscientiously believes, belongs to her, under the guarantee of the Constitution itself, and which is essential to the preservation of her sovereignty.

The committee deem it not only the right of the state, but the duty of her representatives, under the solemn sanction of an oath, to interpose if no other remedy be applied. They interpret the oath to the Constitution, not simply to impose an obligation to abstain from violation, but if possible to prevent it in others. In their opinion, he is as guilty of violating that sacred instrument, who permits an infraction, when in his power to prevent it, as he who is actually guilty of the infraction. The one may be bolder and the other more timid, but the sense of duty must be equally weak in both.

With these views, the committee are solemnly of impression, if the system be persevered in after due forbearance on the part of the state, that it will be her sacred duty to interpose her veto; a duty to herself, to the Union, to present, and to future generations, and to the cause of liberty over the world, to arrest the progress of a power, which, if not arrested, must, in its consequences, corrupt the public morals, and destroy the liberty of the country.

To avert these calamities, to restore the Constitution to its original purity, and to allay the differences which have been unhappily produced between various states, and between the states and general government, we solemnly appeal to the justice and good feeling of those states heretofore opposed to us; and earnestly invoke the council and co-operation of those states similarly situated with our own. Not doubting their good will and support, and sustained by a deep sense of the righteousness of its cause—the committee trusts that under Divine Providence the exertions of the State will be crowned with success.*

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*The Protest reported with this Exposition, is already given, ANTE, page 244.

The preceding "Exposition" is inserted as being a Document of great historical interest. But although the report was read and ordered to be printed, it was not adopted by the two Houses. Objections were made, that it contained tenets on which the legislature ought not to be committed. The refusal to give legislative sanction to any dubious position, was prudent: but from the high character of its presumed author, and the interest taken in it at the time, it seemed to the Editor a document in the history of the legislative proceedings of the day, well worth preserving. EDIT.

REPORT

ADOPTED BY THE LEGISLATURE OF THE STATE OF GEORGIA, ON THE RESOLUTIONS OF SOUTH CAROLINA AND OHIO. DEC. 10, 1828.

ORDERED TO BE PRINTED IN THE PAMPHLET LAWS, REPORTS AND RESOLUTIONS OF SOUTH CAROLINA, AT DEC. SESSION, 1829.

(See Pamphlet Laws, Reports and Resolutions of 1829, *p.* 79.*)*

House of Representatives, December 10, 1828.

The Committee to whom was referred the Resolutions from the States of South Carolina and Ohio, have had the same under their consideration.

As the subjects referred involve questions of the deepest interest, touching the fundamental principles of the federal government, the sovereignty of the States, causes of complaint for infractions of the Constitution, and encroachments by the General Government upon State Rights, as well as the rights of the States to redress their wrongs, your committee have devoted their serious attention and grave consideration to the subject, which the magnitude and importance of the questions involved require. And from the view which your committee have given the subject, they concur in the sentiments and resolutions of the State of South Carolina upon most of the subjects involved in the discussion.

They entertain no doubt but that the Constitution of the United States is a federal compact, formed and adopted by the States as sovereign and independent communities.

The convention which formed and adopted the constitution, was composed of members elected and delegated by, and deriving immediate power and authority from the Legislatures of their respective States. Its ratification depended upon the Legislatures of the States, each reserving the right of assent or dissent without regard to population.

By the Articles of Confederation of 1778, which was a compact between the States, there was a special reservation of all rights of sovereignty and independence not thereby expressly delegated, which proves conclusively, that prior to entering into that compact, all the rights of sovereignty and independence belonged to the States, and were complete in them, and that they did not intend to divest themselves of any of those rights, except such as were expressly delegated.

In the constitution of 1787, the powers delegated are clearly defined and particularly enumerated. The amendment to the constitution is more explicit. It declares that the powers not delegated to the United States

by the Constitution, are reserved to the States respectively, or to the people.

The States were granting powers to the General Government, and as they enumerated the powers granted, it was useless, and would have been superfluous, to have made special reservations. The affirmative grant of powers enumerated, operates an exclusion of all powers not enumerated.

The States, in forming the Constitution, treated with each other as sovereign and independent governments, expressly acknowledging their rights of sovereignty; and inasmuch as they divested themselves of those rights only which were expressly delegated, it follows as a legitimate consequence, that they are still sovereign and independent as to all the powers not granted.

The States respectively, therefore, have, in the opinion of your committee, the unquestionable right in case of any infraction of the general compact, or want of good faith in the performance of its obligations, to complain, remonstrate, and even to refuse obedience to any measure of the General Government manifestly against, and in violation of the constitution; and in short to seek redress of their wrongs by all the means rightfully exercised by a sovereign and independent government. Otherwise, the constitution might be violated with impunity and without redress, as often as the majority might think proper to transcend their powers, and the party injured bound to yield a submissive obedience to the measure, however unconstitutional. This would tend to annihilate all the sovereignty and independence of the States, and to consolidate *all power* in the General Government; which never was designed nor intended by the framers of the constitution.

Your committee are also of opinion, that the acts of the General Government in providing for the general welfare, must be general in their operation, and promotive of the general good; not the advancement of the interest of any particular section or local interest, to the injury of another.

The term general welfare, implies clearly, that the means used to obtain this end, must be general in their nature and tendency. Any measures, therefore, having for their object sectional advantages or local interests, to the prejudice of another portion of the community, cannot be general, and are therefore contrary to the letter and spirit of the constitution.

It is believed by your committee, therefore, that the tariff laws of the United States, so far as they have for their object the protection of a particular branch of labor to the injury of the commercial interest of the country, and of the agricultural interest of the Southern States, are unconstitutional.

For the same reason, Congress have not the right to appropriate the monies of the United States for the improvement or benefit of a particular section of the country, in which all the States would not have a common interest and equal benefit.

If Congress is invested with the right at all, she is invested to an unlimited and indefinite extent, and may exhaust the whole wealth and treasure of the Government in the promotion of the improvement and interest of particular sections of the country, to the injury of another. In fine, that she may make one portion of the country tributary to another—that she may tax the community to enrich or aggrandize a particular section, and make the general welfare yield to a particular interest.

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But if it be true, as your committee maintain, that the Congress of the United States are restricted to the powers expressly enumerated, it is equally true that they have no power or right to pass any laws but such as may be necessary and proper to carry into effect the powers enumerated, and which promote the general welfare of the United States.

In relation to the right of Congress to interfere either directly or indirectly with the subject of slavery, as recognized by the laws of this State, your committee deem it improper and unnecessary to enter into a discussion.

This State never can, and never will, so far compromit her interests on a subject of such deep and vital concern to her self-preservation, as to suffer this question to be brought into discussion. Non-interference on this subject was the *sine qua non* on the part of the slave holding States, in forming the Union, and entering into the Federal Compact. As the Southern States would then, so they must now or hereafter consider any attempt to interfere with this delicate subject, an aggression having a tendency to produce revolt and insurrection of the most hideous character.

These states must view with jealousy and distrust, all associations having for their object the abolition of slavery. The principles propagated by the enthusiastic devotees of this project, are calculated to have most pernicious effect—exciting false hopes of liberty; producing discontent and dissatisfaction in the minds of the otherwise happy and contented slave, and a restlessness for emancipation, when the actual state of things forbids the possibility of it at present.

The Colonization Society is considered by your committee as one of a dangerous character in this respect. Its schemes of colonization are vain and visionary. Its professed objects never can be accomplished—they are wholly impracticable. This institution, therefore, should not, in the opinion of your committee, receive the support, countenance, or patronage of Congress, and not being a matter of national interest, the Government has no right to take it under its protection, or make appropriations for its support. Your committee therefore recommend the adoption of the following resolutions:

Resolved, That this legislature concur with the legislature of the State of South Carolina, in the Resolutions adopted at their December session in 1827, in relation to the powers of the General Government, and state rights.

Resolved, That his Excellency the Governor be requested to transmit copies of this preamble and resolutions to the Governors of the several states, with a request that the same be laid before the Legislatures of their respective states; and also to our Senators and Representatives in Congress, to be by them laid before Congress for consideration.

Approved, Dec. 20, 1828.

JOHN FORSYTH, *Governor.*

MEMORIAL

ON THE SUBJECT OF THE LATE TARIFF; ADDRESSED BY THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA TO THE ANTI-TARIFF STATES.

ORDERED TO BE PRINTED WITH THE PAMPHLET LAWS, REPORTS, AND RESOLUTIONS OF SOUTH CAROLINA, AT DEC. SESSION, 1829.

(See Pamphlet Laws, Reports and Resolutions of 1829, *p.* 81.*)*

House of Representatives, December 17, 1828.

A Memorial from the Senate and House of Representatives, in General Assembly, representing the feelings and opinions of the people of the State of Georgia, upon the Tariff Law passed at the First Session of the 20th Congress; submitting to the States opposed to that obnoxious law, a summary of the principles of the opposition of this State to it, and requesting a concurrent Constitutional opposition to the law, and the system which it is intended to foster.

The Senate and House of Representatives of the State of Georgia, in General Assembly met, solicit the concurrence of their sister States opposed to the Tariff lately passed, in resisting the law and its operation, upon the following reasons, and in the manner hereinafter proposed.

1st. We oppose the Tariff Law, last enacted, because we believe it to be both in its object and its spirit, unconstitutional.

It is unconstitutional—1st. Because the power "to lay and collect duties and imposts, *to pay* the debts, and provide for the common defence and general welfare of the United States," is abused and perverted to the accomplishment of objects not within the sphere of direct federal legislation. The power intended to be given by the Constitution, to Congress, is that of raising a revenue, for objects specified.

The late tariff destroys the revenue, and is intended and avowed to have for its object the encouragement and protection of Domestic Manufactures. As it destroys, or at least, diminishes the Revenue, it is so far inexpedient.

It operates thereby, indirectly, as an onerous tax upon the consumers of Southern productions. So far, it is unequal and oppressive—therefore, it is inexpedient and impolitic, as a general law.

It intends to encourage and protect domestic manufactures, by reversing the accustomed course of exchange in trade—viz: the raw materials for manufactured commodities. It thereby intends to effect an entire alteration in the system of our commercial intercourse with foreign nations. Hitherto, the trade of the United States has been comparatively absolutely free; subject only to regulations, expedient, when consid-

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ered in relation to the raising of a revenue. The present tariff restrains its freedom, and therefore lessens both its extent and its profitableness.

2dly. It is unconstitutional—Because, if it be defended under the power to "regulate commerce with foreign nations," while the avowed object is to encourage and protect domestic manufactures, it is a palpable abuse of the power given by the language of the Constitution—For under a power of prescribing the *rules* of exchanging foreign and domestic commodities, the power is so perverted as to endanger, not only the prosperity of our commerce, but almost its very existence, in the anxiety to accomplish an object altogether domestic, and even sectional. An object, too, which the Constitution intends to effect, by means prescribed, and altogether different from those used. For, under the power to promote "the useful arts," an ample and effectual general power, with a prescribed mode of use, resides in Congress, to encourage and protect all useful arts. To use another and a different power, capable, indirectly, of effecting such objects, concurrently with that obviously intended to effect them, is an unconstitutional abuse of the former power.

3dly. Independent of its unconstitutionality, the law is inexpedient, and oppressive generally, particularly on the Southern division of the United States.

It is inexpedient, because it brings into premature existence a vast system of industry, which should be, and which in time would be, the natural and spontaneous production of circumstances, and the condition of the country. This is nothing but pure political empiricism. It is inexpedient, because that industry, having this factious origin, must be sustained by a continued and like factious support. Law after law will be required, or demanded, to support that department of labor which springs up under the encouragement of law—Avarice and cupidity are extravagant in their schemes of pecuniary adventure—And every revulsion of their affairs which injudicious or boundless speculation may produce, will, as the commercial policy of England exemplifies, be sought to be remedied, by cumulative impositions upon foreign commerce.

It is oppressive, because one species of industry is directly supported by government, at the expense of other branches of industry. The productions of Southern agriculture, which hitherto have mainly supplied the exportation of this country, and drawn its varied and abundant importation of manufactured commodities, are almost *forced* into domestic markets, and confined within one channel.

A liberal reciprocity of trade, between our own and foreign nations, being by this means destroyed, the vender of agricultural products is in effect deprived of a choice of markets, either foreign or domestic, and compelled to vend in the latter. Confined to that, he is dependant on the manufacturing consumer, for the price of his raw materials. The competition of manufacturers cannot sustain their old prices. And the law operates unequally and oppressively in this—that the agriculturalist is deprived of the liberty of choosing his market. This liberty, hitherto enjoyed, and which has hitherto been his security for fair and adequate prices of his productions, by exciting foreign and domestic competition, is in effect taken away—For heavy impositions upon foreign imports exclude foreigners from market, by destroying the equality of reciprocal advantages. Thus, the domestic purchaser controuls the market. The advantage heretofore enjoyed by the agriculturalist, is destroyed—he no longer can controul his prices by the power of optional disposi-

tion at home or abroad, but is controuled by purchasers independent in their fortified monopolies.

This abstraction of an indisputable right of the agriculturalist, under the free trade intended by the Constitution, is not, and cannot be compensated by the promised, yet contingent, remote, and improbable advantages resulting from manufacturing rivalry.—It is inexpedient, because it brings prematurely into existence those manufactories whose materials are drawn from the mines of the earth, by imposing duties on the articles manufactured abroad, with a view to prohibit their introduction, and protecting the manufacture of the same articles at home. The prices of manufactured imports are thus regulated by law, to effect an object in its nature partial and sectional. This, too, is a restriction which operates unequally. The consumer is deprived of the advantage of seeking a supply of his wants, on equal terms, at home or abroad, at his option. The prices of foreign manufactures, and other commodities, are arbitrarily fixed high, to force the consumer to purchase what under such restriction can be procured cheapest; which must be, the domestic manufacture. Here the manufacturer is the favorite of government—legislation directly confers upon him peculiar advantages—while the agriculturalist pays him tribute, and is in dependance upon him.

It might be assuming too broad a ground, to say that the Constitution forbids the encouragement and protection of any object of industry—that it forbids the protection of any manufacture whatever. It is both advisable and patriotic, that all the necessaries and impliments of military use, in protecting and defending our rights, and our honor as a nation, should be the product of national industry—"To provide for the common defence and general welfare," is a power clearly given to the Congress. The power given is vague, and if taken separately, indefinite; but when taken in connexion with the cautious, and even jealous limitations, of federal powers, and considered in reference to the specified general objects of our confederation, it cannot be deemed to be a power limitable only by the discretion of a majority of Congress. Does not Congress provide for the "common defence and general welfare," in erecting fortifications? Is the "general welfare," something distinct from, and separable from the "common defence?" And if so, what class of objects and measures can be enumerated under it? The power to "provide" for the "general welfare" certainly confers not a discretionary power over every object of human legislation. It refers to appropriations of money, for proposed objects, included within the enumerated federal powers. Whether any proposed measure, or regulation, will promote the general welfare, is a question entirely speculative—Whether legislative action upon such measure, is within the limit of constitutional competency, or whether its object be constitutionally pursued, is another question. Measures of an experimental character, and problematical operation, upon the general good, transcend the prudent restraints, and violate the spirit of the Constitution. To guard it from violation, is the proper object of State vigilance: to restore its purity, a proper and legitimate object of their several or united endeavors.

The spirit and objects of the Federal Compact, place a virtual constraint upon latitudinary construction and implication. The power is clearly limited by its objects. We object, therefore, to the expansion of federal powers by construction—We deny the right of Congress to restrain the freedom of our commerce, to *protect*, as it is said, domestic industry; and we affirm, that a power wisely given to Congress, is carried to an extent at once unnecessary, inexpedient, and even abusive.

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4thly. The late Tariff, "altering the duties on imports," if the power of the Constitution were strictly adhered to, would be a revenue bill. It is calculated to diminish the revenue. In this, the law is inexpedient and injudicious. But the avowed object of the law is to promote manufactures at home. Under the power, therefore, to raise a revenue, for specific national purposes, a different object is pursued. In this the power is perverted. If the law be called a regulation of commerce, it is, in like manner, inexpedient and oppressive.

If the law in question, upon its face, promised a greater prosperity to our external commerce, which the Constitution intended to preserve and extend by wise regulations, we should deem the power to regulate it faithfully fulfilled and executed. But on its very face, the features of ruin are set forth in full relief—And a short experience has realised the consequences which its provisions indicated. Is the law, in this light, calculated to produce its legitimate object? If experience of the contrary proves not merely its inefficiency, but its injurious operation, policy on the first ground requires, justice, expediency and necessity demand it on the second. If the decline and ruin of our commerce is the consequence of an attempt to regulate it, the consequence proves the measure to have been injudicious, either in conception or execution. Either would be a sufficient ground of repeal. If under the pretext of "regulating commerce," or of "raising a revenue," the aim is, to effect a collateral and indirect object; if a legitimate power be used in disguise, to accomplish a purpose, which, if the power and right to accomplish it existed, could be accomplished by a direct, overt, and undisguised exercise of the power; then, and in the first case, the legitimate power is abused and perverted: and in the second case, the stratagem resorted to argues the consciousness of using improperly a proper power, and a disregard of the restraints and limitations of the powers of the Constitution. This spirit is censurable, and calculated to impair the vigour of the Constitution, and vitiate the purity of federal legislation; it leads to the use of unconstitutional powers; it leads to illiberal and sectional legislation; and produces a disregard or oblivion of national interests.

While complaining of a law intended solely to promote sectional objects, we will endeavour to avoid an opposition upon sectional interests and feelings. We are aware, that if each State consulted its own interests alone, the consequences might be particularly disagreeable, and injurious to others; so, too, if one section of the Union acted on the same illiberal principle. It might be impracticable in the Federal Government of these States to secure all rights of independent sovereignty to each, and all the particular interests of an individual State, or section of States, to their fullest extent, and yet provide for the interest and safety of all. To reconcile all to federal legislation, partial and conciliatory compromises of sectional interests must be made. Individuals entering into society must give up a share of liberty to preserve the rest. This is the rational and harmonising spirit and doctrine of law. It is strongly applicable to these States, confederated for the great purposes of general defence, general benefit, and general harmony. For the advantages and benefits of union, the interests of particular States, or divisions of States, should be in some measure compromised; that a spirit of liberal and fraternal conciliation should regulate all measures intended to advance their pecuniary prosperity. Thus, if it be the interest of the Middle and Western divisions of the Union, to manufacture, their interests should not be promoted by making the agricultural divisions of the Union tributary to them.

The population of the first divisions, which secures to them a numerical predominance in the federal councils, enables them to controul the measures of legislation to their particular benefit. It is true that the political will of the Union, (if a majority of members on the floor of Congress, be considered a fair representative of the will of the Union) was in the Congress which enacted the Tariff, clearly in its favor. Are we told that we must submit to the will of the majority? We reply, that while we admit the general propriety of submission to that voice, does it imply, that we are to observe the doctrines of "passive obedience and non resistance?" That would preclude the constitutional right of remonstrance. But such sentiments are not the native growth of freedom and republicanism. Besides, the ability to use a power, does not necessarily imply the expediency of using it; on the contrary, where the difference between a majority and a minority is so small; where opinions and feelings on subjects are almost in equipoise; reason and prudence require, that a dominant party should use its powers with delicacy and caution. This should especially be the case with the States of this Union. Under our Federal arrangement, Congress is made the depository of certain powers, yielded up by the States severally, for general objects; objects which, in relation to the Union, may be called national, in contradistinction to State objects. Amity, arising from, and cemented by a thousand sympathies and benevolences of revolutionary endearment, presided at this scene of compromise and concession. It becomes us to recur to this period, to catch from the records and events of those times, the spirit which influenced their political agents; to carry this spirit with us into the councils which act upon the interests of the nation. Those who look not back to their ancestors, seldom look forward to posterity; the present fills their conceptions, and the future and the past are alike indifferent to them. When the past is thus considered, the wise and judicious will doubt and hesitate to exercise a power, or execute a measure, ruinous to the interests of, and therefore offensive to a large minority of the Union.

But to reconcile the southern divisions of the Union, averse to changing its pursuits, the fruits of which have hitherto been profitably exchanged for the various commodities of foreign nations—to reconcile New England to the diminution of her boundless carrying trade—the former is promised an eager market and a fair price for the products of their soil—the latter is promised abundant employment, in exporting the rich and various manufactures of the United States. These promises proceed upon the following assumptions.

1st. That by legislative protection, domestic fabrics, and manufactures in general, can be supplied at as cheap or cheaper rates, and of qualities as good, as they can be brought to us from abroad.

2d. That the domestic consumption will use up all that quantity of our usual exports, which our imposts may hereafter prevent foreigners from taking.

3d. That the nautical carrier shall experience no inconvenience from the ruin of the usual carrying trade. That it shall be compensated by a new and equally extensive and profitable trade, in carrying the competing manufactures of America into distant markets.

These assumptions proceed upon grounds highly improbable—nay, almost impossible. Contingencies are promised in satisfaction for certainties—benevolence is proffered in substitution for rights—These are the

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expedients used to soothe an indignation, aroused by the rigorous and oppressive exercise of power; a power distorted and perverted. We decline a repetition of the powerful expositions made against the first assumption. The price of a manufactured article is made up of three components—1st. The price of the raw material—2d. the wages of labor—3d. the profits of capital. The powerful expositions which have gone forth to the world, show the futility of the first assumption. The other assumptions are entitled to as much credit as the first.

The present Tariff is calculated to diminish our revenue. If the course of policy, pursued in raising the imposts on all imports, be fully effectuated, and the domestic manufactures supercede those hitherto imported—in which process our external commerce will be dwindling away, and with it, our revenue, the question arises, what will be the resort, to raise a revenue? Direct taxation. We deprecate the time when this will take place; when the citizens of the different States will be called on to support, by direct taxes, not only their particular State, but also the Federal Government. Patriotism will cheerfully submit to onerous exactions, to sustain the government in exigency and peril—but it will feel with indignation the weight of any imposition, which sectional power influenced by the illiberality of sectional interests, may impose. It will feel with regret, mingled with a proud contempt, a faithless departure from the letter and spirit of a compact, formed with the fondest hope of its purity, and hitherto, until recently, cherished and adhered to with an exalted and patriotic reverence. Taxation is a power, which to avoid offence requires a delicate use and execution. An indirect, insinuating, and therefore inoppressive mode, is preferable to any direct taxation. When the tax of an article or item of property is disguised and concealed by its price—which, in relation to the article itself, is considered its fair equivalent—the tax is paid and is not felt. It falls almost insensibly upon the consumer. And mankind in this way, will pay with no repugnance, a sum of taxation, which if demanded of them as a tax *eo nomine*, and in cash, they would reluctantly hand forth. The payment of two specific taxes, for two specific objects, would be throughout the States disagreeable, and would seem and feel oppressive; however constitutional and proper it would be amidst national necessity. But the prosecution of a course of policy by the Federal Government, which would render this resort always necessary for its support, is a course which we feel opposed to, and will perseveringly and decisively resist. To this result the tariff policy, with its avowed object, tends—to that, as the instrument of effecting it, we will yield a full and steady tribute of opposition. The exports of Southern production have, and still constitute, the chief mean of exchange for all articles brought from the abounding stores of British industry. The tariff intending to promote domestic manufactures by almost prohibiting this exchange, intends to force Southern products into Northern markets. By this, the agricultural and mercantile interests are oppressed. Is not the tendency to restrain and diminish foreign commerce? Does it not abuse and pervert the power, "to raise a revenue," as well as the power "to regulate commerce?"

Congress has power "to promote the useful arts"—Among them, certainly, the arts of manufacture and the art of agriculture—How? By *forcing* the fruits of agricultural industry into one channel, and into one market? By forcing them to contribute to manufactures? And thus, in effect, giving bounties to manufactures, to stimulate their activity and their enterprise? No—But by securing to the inventors of improvements

in the useful arts, the benefits of their inventions and their discoveries. Household industry supplies the immediate wants of families, their food and their raiment. Advancing one step further, an individual, for gain, and the convenience of a neighborhood, may manufacture to supply for equivalent compensation, the wants of a population around. Thus the progress is spontaneous and natural. The progress of their increase and diffusion throughout a country, is alike natural, and proceeds upon the common principles of necessity, convenience, profit and ability; as these are developed amidst an increasing and improving population, daily and yearly acquiring a thousand artificial and refined wants. Manufactories, which supply the various conveniences and elegancies, which refinement or luxury either require or crave, will naturally spring up by the enterprise and cupidity of individuals. They will be resorted to as a profitable or supporting species of labour, by thousands; and will be seen to increase and prosper, according to the amount of the wants and demands of population.

The greatest stimulant to the improvement and extension of the useful arts, exists in the power resident in the Federal Government, to appropriate to individual genius and skill, the benefits of its inventions and discoveries. The Federal Convention, sagaciously foreseeing this natural progression of improvements, wisely withheld from Congress the power to promote them by additional protecting laws. By this power the same rewards are held forth to active and inventive genius throughout the Union. What further power could have been necessary? Can Congress incorporate a company of manufacturers in any one of the States? It cannot. If a power of protection any other than that specified, "to promote the useful arts," was intended to be given by the Constitution to Congress, why was it not given in some direct, positive, indisputable form? But an express refusal to give such a specific power, is recorded on the journals of the Convention! And the power of granting patent rights, for inventions and discoveries, substituted as more expedient. A power highly remunerative and incapable of oppressing.

A tariff for raising a revenue, is constitutional and necessary. Further than this, no object was intended by the power. The legislative power of the several States is the proper power to promote manufac tures, by incorporating companies. Such is the common mode of concentrating the wealth of individuals, and rendering it, when thus united, competent to do what individuals could not effect. Such, too, are voluntary associations, formed with the hope or the certainty of particular advantages; and as such, their efforts may be considered as private enterprises. Thus, there exist two proper depositories of powers, capable of producing the same effects, by two different modes. The federal power, specified in the Constitution, (Art. 1st, Sec. 8) "to promote the useful arts,"—And the State power of incorporating companies, or giving exclusive privileges for any specific objects, promotive of its internal prosperity: for example, manufacturing companies, when circumstances hold forth to a combination of individuals, the prospect of profitable exertions. These powers are, too, in strict concurrence. A judicious and necessary tariff may, collaterally, stimulate domestic industry—arouse activity—and inspirit speculation. Such results may often succeed upon a truly revenue regulation; and the fact of their following proves the regulation to be judicious. But what are we to say of a tariff which prostrates commerce? Which operates so oppressively on the fair and honorable enterprize of merchants, as to produce the same effects as a

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law to promote smuggling? We must condemn it as injudicious—And when we consider the law to have been enacted to encourage domestic manufactures, we must condemn it as unconstitutional. Further—If such a power was intended to reside in Congress, other than that expressly given, why did the Constitutton expressly forbid the imposition of duties on exports? Does not this exemption intend, and in fact promote an absolute freedom of trade? Yet, the present tariff policy, intends by a reverse operation, to defeat the effect of that exemption.

England promoted her Woollen Manufactures by inhibiting the exportation of wool. To promote manufactures she pursued a course the opposite of the "American system." Yet the English plan is that, which would directly promote the objects of the "American system." This plan cannot be pursued, it is forbid by the constitution. Yet such, if the Constitution had intended it, would have been the power, given to legislate the country into manufacturing towns—Prohibiting the exportation of our raw materials, would have induced the necessity of manufacturing. Thus the country might have become an inexhaustible supply for the wants of the commercial world.

One section of the Union may be destined by its physical circumstances mainly to pursue manufacturing. If so, the rapid progression of every thing, amidst lively and unfettered enterprise, will early develope that destiny. It will be sustained by circumstances more powerful and permanent than legislation. Amid the rival industry of sister States, absolutely free in their social and commercial intercourse, what is mutually advantageous will be developed with insensible rapidity—when thus made known, interest will lead to their enjoyment. Proceeding thus, a Federal and Domestic Legislation, liable to the natural bias of sectional interest, and therefore to abuse and partial oppression, being abandoned, the geographical delineation and fosterage of particular interests, will produce no heart burnings among the several divisions of our Union.

We, therefore, recommend to our sister states, opposed to the recent Tariff law, solemnly to protest to the Senate of the United States against that obnoxious law—to deprecate the abuse of limited powers, to accomplish ends capable of accomplishment by legitimate and prescribed means.

We recommend a remonstrance to the States in favor of the Tariff, advising of its injurious tendency and operation to their sister States opposed to it, and insisting on the necessity of compromising sectional interests for the general good.

We recommend a policy for self-preservation, exhorting each State opposed to the Tariff policy, to ward off its effects, by living as far as possible within itself.

We recommend a continued and strenuous exertion to defeat that general, pernicious, and unconstitutional policy, contemplated and pursued by the advocates of the tariff.

Such means, may restore Federal Legislation to the standard of Constitutional correctness. Times, occasions and provocations, teach their proper lessons and expedients. Future measures will be dictated by expediency; the nature and tendency of injury will suggest the mode and measure of future resistance.

Therefore Resolved, That copies of this Memorial be signed by the President of the Senate, the Speaker of the House of Representatives,

and by his Excellency the Governor; and that one be transmitted by his Excellency to each State of the Union opposed to the Tariff act of First Session of the Twentieth Congress.

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IRBY HUDSON,
Speaker of the House of Representatives.

ATTEST—WM. C. DAWSON, *Clerk.*

THOMAS STOCKS,
President of the Senate.

ATTEST—WM. Y. HANSELL, *Secretary.*

APPROVED, DEC. 20, 1828.

JOHN FORSYTH, *Governor.*

REMONSTRANCE,

To the States in favour of a Tariff; adopted by the Legislature of the State of Georgia, Dec. 19, 1828.

ORDERED TO BE PRINTED AMONG THE PAMPHLET LAWS, REPORTS AND RESOLUTIONS OF SOUTH CAROLINA, AT DEC. SESSION, 1829.

(See Pamphlet Laws, Reports and Resolutions of 1829, *p.* 87.*)*

House of Representatives, Friday, December 19, 1828.

To the People of the States in favour of prohibiting importations, as a policy for the encouragement of domestic Manufactures.

To preserve the Union of these States, and the full enjoyment of that happiness which is secured to us all by a holy regard to the Constitution, is deemed an object of sufficient magnitude to justify an Address, friendly in its character, and brotherly in its objects, from one part of the political family to the other.

The people of Georgia believe the crisis to have arrived, when it becomes necessary, through their representatives, to express to you, in language of sincerity and truth, their views and feelings upon the great question which seriously affects the interest of a large portion of the confederacy, and agitates the feelings of the whole. It is not for the purpose of making captious objections to the exercise by Congress of legitimate powers, that we claim your attention: But with an ardent hope, founded upon the intelligence, virtue, and love of common country, which reigns among the people, of bringing the public servants back to that republican simplicity, in the administration of our affairs, which marks, sustains, and adorns our political institutions, and is the only safeguard to liberty. The nature and extent of our political associations cannot be misunderstood by any one who will discard sectional interest and dispel from his mind the mists and prejudices produced by its deceptive influence.

That the relation in which we stand towards each other, may be distinctly understood and acknowledged, it is only necessary to review our several situations previous to any political alliance with each other. From our earliest colonization we were of kindred blood, and kindred in principle and close connections in pure love of liberty. Our primary political connexion had its origin in the oppressions of the mother country. We resisted aggressions upon our unalienable rights, and with a fervour that thrilled through every heart, joined our fortunes, our lives, and our sacred honor, in the declaration of our independence and the achieve-

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ment of our liberties. Providence hallowed the undertaking, and victory sealed our triumph; and each of us was acknowledged a *free, independent* and *sovereign State.*

To secure the blessings of liberty to ourselves and our posterity, we formed that Constitution, against the provisions of which no Georgian was ever heard to utter a murmur of complaint. It was by that Constitution we expected to be governed in our relations with foreign governments, and with each other as States, or Independent Communities. The people of Georgia wish neither to deny nor withdraw any power which they have granted. They love and venerate the Constitution, as they believe a tenacious adherence to it is the only security to the prosperity, the liberties, the glory and the happiness of all the States; and that upon its perpetuation, in its native purity, the principle and progress of free government in the whole world depend. In the legal exercise of the powers conferred in that instrument there is not a dissenting voice in Georgia. But it is the misconstruction and abuse of those powers that is sought to be redressed. The sovereignty of the State Governments was never intended to be given up or impaired, in any other manner than that expressed in the Constitution, and was retained and cautiously guarded, both by the *limited* and special grants of power in the Constitution, and by the insertion in that instrument of the following articles: "The enumeration in the Constitution of certain rights, shall not be construed to disparage others retained by the people." And "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." These articles were intended as express limitations to the General Government; and explicit reservations to the State Governments of every power not granted. The language is too plain to fail in expressing the object of the Convention. It cannot then be *believed*, notwithstanding the warmth and earnestness with which it has been contended, that the States assented to any powers being given to the National Government, but those which were expressed and those which were strictly necessary and proper to carry such expressed powers into effect.

A system of measures not contemplated by the Constitution, has been adopted and pertinaciously pursued by Congress, having for its object the improvement of particular parts of the country, and the advancement of sectional interests. These measures, of whatever kind or character, are justly objectionable—as they can only be supported by forced constructions of the Constitution, and are partial and oppressive in their operation: and among them may be included that system, which has been in progress for years, of levying heavy duties, to exclude from our ports many articles of general commerce, for the purpose of encouraging and protecting the manufacturing interest, in exclusion to the other great branches of industry.

If it were inexpedient only, oppressive and ruinous as it is to our interests, we would not use this method of opposing it. The repeal of the measure would be sought in a different way; but when it is an open and violent infraction of our Compact, we have a right which we will never surrender, to demand its repeal. It is not presumed that you will continue to confide in those who persevere in the exercise of a power which has never been granted them. If it has been granted, it is open to public view; there are no secrets in the Constitution—but for the authority which it confers, the National Government would not exist. Its power is based upon the Constitution alone, and has no auxiliary. Where,

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then, we may confidently ask you, is the power granted, either expressed or implied, either in letter or spirit, to pass laws to create, extend, and to protect a particular branch of industry, to the prejudice of other interests of equal importance to the people, and of equal advantage to the Nation? It cannot be denied that this is the effect of protecting duties, and that it was intended to be the effect, as prices of all articles upon which duties are paid are obviously enhanced to the extent of the duty imposed. Is the right claimed by Congress fairly deriveable from the power granted to levy taxes, lay imposts, &c? The object to be obtained by this power is very clear. It was to enable the government to raise a revenue to defray expenses, indirect taxes being considered a better mode of raising funds than direct, because they bear most heavily upon those who have most ability to pay them. That power was likewise given to Congress to prevent the injustice which would have resulted to the non-importing States, by paying their indirect taxes into the coffers of importing States, and at the same time through direct taxation upon their people to furnish their quota of the disbursements of the government. It was not in contemplation of the framers of the Constitution, that a power to raise revenue should be exercised to destroy it. The Convention of Harrisburgh, who met to goad Congress to the late desperate expedient for the establishment of the monopoly of the manufacturers, knew full well, while recommending an increase of duties, that a decrease of revenue would be the *immediate*, and the annihilation of it, the *final* result, if their wishes were accomplished; and gave occasion to the subterfuge used in Congress to evade the question of Constitutional power, by rendering it impracticable for the judges of the Supreme Court to ascertain the true object of the act passed, without looking to the motives of its advocates, which unhappily, as it regards this act, they do not consider themselves authorized to examine.

The Constitution declares that the imposts shall be uniform throughout the United States. That declaration was intended to protect the States from any partiality and advantage which might otherwise have been extended to one quarter of the country, by making the imposts greater at one port than another. What is the difference in effect, if you insist, through that power, to levy such excessive duties as will give the interest of one part of the community, an advantage over that of another? though that end is not accomplished by imposing greater duties at some ports than at others, yet you desire to attain the same object by their excessive imposition and increase.

Is the right to protect manufactures, claimed under the power to regulate commerce? It is true, Congress has the power to regulate commerce with foreign nations, and among the several States, and within the Indian tribes. This power was given to enable Congress to carry into effect the commercial treaties with foreign nations, and render them uniform throughout all the States, to save the perplexity which would have arisen by each State retaining the power of making its own commercial regulations with foreign nations, and with the States, which, without such a grant of power, would not have been effected. That clause was never intended to vest the right, nor can it be legitimately inferred from it, that Congress had the power of legislating upon the internal concerns and interest of the people of the several states. It was only intended to regulate our relations between the whole of the States as one body, and foreign governments, and our commerce with each other as states, or independent communities. If under that grant of power, the right of passing laws for the protection of manufactures

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can be justified, a continuance of the principle, and an extension of the practice, will lead to the entire extirpation of the very commerce which that clause was inserted to regulate. If it be your interest to lay such interdicting duties as to exclude one article, by the same rule you may exclude another, and go on excluding, until you completely inhibit the importation of every species of foreign manufacture. Should you continue to claim the right of excluding all articles which it is your interest to manufacture, you will not, nor cannot deny the same right to other sections of the Union. We might upon our part, insist upon such a duty on sugar, rum and molasses, as to prohibit the importation of those articles; and though we might not be able at once to furnish a sufficient supply for the consumption of the whole Union, it would be no decisive argument against us, since it is always in our power to retort upon you the favorite answer of the manufacturers—"It is true we cannot at present furnish what is required for the consumption of the nation, and the people will pay higher for these articles of necessity; but give us our own prices long enough, and we shall furnish them much cheaper than they are now afforded, to the great benefit of the country, and the encouragement of American industry."

Other sections of the country having the same right, would require prohibitory duties upon their favored products or manufactures; and if protection be granted to *all*, as justice requires it should be, if granted to *any*, the inferrence is irresistable that the commerce with foreign nations, so far as regards importations, would be at an end; it follows as a necessary consequence, that all foreign commerce will be entirely cut off. Money is the only medium of exchange, and no nation will find it to be to her interest to buy our exports, unless we receive theirs in return.

If the system cannot be justified in the *general*, upon the *principles* of our government, it cannot be in *part*—It is not reasoning upon extreme cases, and if it were, it is not an illegitimate test of constitutional principle.

Whenever a power is exercised by Congress, which is not granted, it is an assumption of authority by that body, dangerous to the liberties of the people, since every assumption of power is an act of despotism.

The intention and letter of the Constitution, were to prescribe within certain defined limits, the power of the General government, and not to consolidate the power of the state sovereignties. If the latter was the real government, no matter how arbitrary and partial might be its measures, they would nevertheless be the law, as the majority would rule. But while the Constitution is to regulate the power of Congress, any act which is in contravention of that instrument is illegal, and not binding, even though it may have been passed unanimously, and twenty-three out of twenty-four States should assent to it. "To provide for the general welfare," is an expression in the Constitution by virtue of which it has been contended, that any law would be constitutional which, in the *opinion of Congress*, would redound to the general interest. From an inspection of the instrument, this, so far from being a grant of power, is the designation of one *object* to be effected by powers specially and distinctly granted in the Constitution. The Constitution never intended to grant power by this clause; if it had, there would have been no need of any other article in the Constitution—If it were standing alone, and received the construction given to it by those who claim unlimited controul for the national councils, it would of itself render every article in that instrument nugatory—Indefinite in its extent, it would give, if it gave

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any thing, unlimited authority. Establish its claim as an authoritative article, and it will justify any thing and every thing which Congress might pretend to believe would promote the general welfare.

The interest of one State was never intended to be sacrificed to that of the others—Climate, soil, and custom, have prescribed different occupations and pursuits suitable to the situation and condition of each. If it be the interest of any part of the confederacy, to manufacture, let them pursue those vocations in peace to which their genius and circumstances direct them; it is not, though, expected that they will by legislative enactments, continue to require the agriculturalist to make sacrifices to enhance the products of their labor. Such pretensions are foreign from the spirit of the compact. We have as much right to lay probibitory duty upon the hogs, horses and mules of Kentucky and Ohio, to promote the encouragement of raising those animals, as the General Government has to prohibit foreign goods, to promote the manufacture of them in a peculiar section; or that Kentucky should vote for a duty on bagging to compel us to pay a greater price for the article. The whole prohibitory system is founded in error, and humanity weeps over the fading patriotism of those who sordidly pursue their own interest at the expense and utter sacrifice of the holy principles of liberty and the constitution.

The people of Georgia are fully sensible of the impositions which are heaped upon them by the extravagant constructions and perversions of the power delegated to the United States, and regret that they have causes of complaint too well founded to be removed by argument, or to be softened by explanation. Let us recur to the inducements which were held out, the great objects to be attained, by our political connexion. The Constitution was adopted to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and to secure the blessings of liberty to ourselves and posterity. Can it be said that the anticipations of our forefathers, who looked to effect these objects by the instrumentality of the Constitution, are realised, when our interests are made subservient to a growing monopoly? Is justice established, when we are required not only to buy the products of your labor at your own price, but to suffer by the same compulsory arrangement the loss of a great market, and a depreciation of price for our own? Is it reasonable to expect a more perfect Union, when the interest of a portion of that Union is wholly disregarded, and made the subject of depredation by the other part? Can tranquility be ensured among a people who are reminded of their injuries and oppressions by repeated infractions of their compacts and solemn engagements? Is the general welfare promoted by a studious and systematic course of legislation, which has for its object the promotion and encouragement of a particular branch of industry at the expense of all others? And will the blessings of liberty to ourselves and posterity be secured, if the violence of irritated feelings, and a sense of that misery and degradation which, if the limitations of the Constitution are not more strictly observed, must be our portion, should produce such convulsions as to rend in twain the Temple of Liberty?

When we entered the confederacy, it was for the protection of our rights, and we were particularly cautious to grant no power by which they might be either disregarded or abused; and if instead of that protection, they are abandoned, and made the sport of the self-interest of our nearest and dearest friends, we must, as we did under British

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domination, seek an effectual remedy. This we shall be compelled most reluctantly to do, if these partial and unconstitutional measures are persevered in, without fear of imputation from our cotemporaries, or the impartial scrutiny of posterity. But does not the heart of philanthropy sicken at the prospect, that the American Constitution, justly esteemed by the friends of freedom throughout the world, as the great monument of the genius and patriotism of the last century, is in danger of being torn by manufacturing cupidity from its high place, while some of the immortal men whose hands aided in its elevation, are yet on earth to witness and deplore the sacrilegious deed!

Resolved, That the Governor be requested to forward a copy of the foregoing remonstrance to the Governors of the several States.

Approved, Dec. 20, 1828.

JOHN FORSYTH, *Governor*.

RESOLUTIONS OF VIRGINIA, ON THE POWERS OF THE FEDERAL GOVERNMENT.

ORDERED TO BE PRINTED WITH THE ACTS AND RESOLUTIONS OF SOUTH CAROLINA, DEC. SESSION, 1829.

(See Pamphlet Laws, Reports and Resolutions of 1829, *page* 71.*)*

REPORT OF THE SELECT COMMITTEE ON THE RESOLUTIONS OF GEORGIA AND SOUTH CAROLINA.

The Select Committee to whom were referred the communication of the Governor, transmitting the proceedings of the Legislature of Georgia, in relation to resolutions from the States of South Carolina and Ohio, and the proceedings of the State of South Carolina on the subjects of the Tariff and Internal Improvements, have bestowed on those subjects their most profound consideration.

Having subjected the preambles and resolutions to strict examination and severe criticism, they find the annunciations and results to be mainly sustainable, so far as they pertain to the Acts of Congress, usually denominated the Tariff Laws, and thus designated in those several proceedings.

The proceedings of the Legislature of the State of Georgia, as well as those on which they are founded, emanating from the Legislature of South Carolina, announce and sustain the opinions of Virginia, heretofore proclaimed by successive Legislatures; opinions, which rest on truth and reason; which your committee can discern no cause to relinquish; but which they are ready to defend and sustain, as involving the most essential interests of the Commonwealth.

Respect for the dignity and character of Virginia, and an anxious regard for the tranquility of the Union, admonish your committee to withhold such remarks as might be suggested by the consciousness of oppression; such remarks could have no other tendency than to excite hostile emotions, ill-adapted to the grave consideration of the momentous question which they are deputed to examine. Your committee will, therefore, proceed with calmness and temperance, to examine the opinion heretofore expressed by preceding Legislatures of this State, that the several Acts of Congress, passed avowedly for the protection of domestic manufactures, are manifest infractions of the Federal Constitution, and dangerous violations of the sovereignty of the States.

The Government of the United States has ever been regarded by the sovereignty of Virginia, as Federative in character, and limited in power; as deriving its powers from concessions by the States, which concessions

were clear and explicit, plainly declarative of all which was delegated, and actually containing a specific enumeration of every power designed to be transferred. The purposes for which these powers may be exerted have been regarded as distinctly defined, and it was considered that the Government was prohibited, alike, from the exercise of any power not contained in the specific enumeration, as from the perversion of those actually delegated, to any purpose not contemplated in the grant. The Convention which, on the part of Virginia, ratified the Constitution of the United States, gave this interpretation to the instrument. Its advocates then urged its adoption, as constituting such a Government as is here described. It was insisted, on many occasions, that the powers of the Government were expressly enumerated; and that none others could be claimed. It was insisted, with equal earnestness, that the purposes for which these powers might be exerted, were as distinctly ascertained, and that they could not be perverted to any other object. The ablest and most zealous advocates of the Constitution insisted, that such was its just construction, even according to the terms of the original text, and it must be aknowledged, that this construction is strengthened by the subsequent adoption of amendments to the Constitution. Those who opposed the ratification of the Constitution, founded their objection on a supposed absence of limitation, according to the plan originally submitted; and proposed, as an expedient to remedy this defect, the amendments which were subsequently adopted. A majority, however, of the Convention, determined on the ratification of the original text, explained and defined by its advocates, as organizing a Government with limited powers, specifically enumerated, and restrained in the exercise of those powers to the attainment of specific ends. An anxious solicitude to establish indisputably this construction, induced the recommendation of those amendments which have since been engrafted on the Constitution, establishing this construction even in the opinion of those who opposed the adoption of the Constitution.

This being the sense in which the Constitution of the United States was originally accepted, your committee have anxiously examined the record of succeeding times, to discover if any things have since occurred, calculated to change the import of the instrument; and after the most patient examination, they confidently report, that nothing has transpired, which could in any manner modify its just construction. If at any succeeding period, attempts have been made to pervert the import of the original compact, Virginia has ever been prompt to avow her unqualified disapprobation, and manifest her undisguised discontent. The imperishable history of '98, has perpetuated the memory of her laudable zeal, in sustaining the true principles of the Constitution, in maintaining the sovereign rights of the States, in successfully resisting the lawless usurpations of a Government bent on the acquisition of boundless power. The deliberations of the Legislature of this Commonwealth, during the period of '98 and '99, in relation to the construction of the Constitution, by a felicitous combination of circumstances resulted in a just and luminous exposition of the true principles of the Federal Compact. This expose clearly ascertained the just limitations of Federal power, and happily pointed out to future generations, the just rule of interpreting the instrument. The construction then placed on the Constitution, was submitted to the decision of the most august of all tribunals, and sustained by the judgment of United America.

The history of Virginia discloses several occasions, on which the Constitution was brought in review, and the committee have found that on

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every occasion where the question was involved, the former Legislatures of this Commonwealth have insisted on a limited construction of the instrument. Sustained by the concurrence of our predecessors, from the earliest history of the Constitution, your committee find but little difficulty in determining the Government of the United States, to be Federative in its character, and limited in its powers—That the powers vested in the Government, are conveyed in an express enumeration—That no power can be Constitutionally exercised, which is not contained in that enumeration—That the purposes for which the Government was instituted, are explained in the instrument; and that the powers specified in the enumeration, cannot be legitimately exerted, for any purpose not designated by the Constitution.

Regarding these propositions as true, it seems to your committee, that to determine on the constitutionality of laws, passed for the protection of American manufactures, it can only be necessary to examine the enumeration of grants. If the power be there expressly delegated, then, indeed, the question ends. If, on the contrary, no such power be there expressly conveyed, we must recur to further reflection.

In examining this enumeration of grants, your committee have not been able to discover any such express delegation, authorizing the protection of American manufactures, by means of prohibitory, or protecting duties. They find, however, a clause in the Constitution, empowering Congress "to promote the progress of science and the *useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.*" On a critical examination of this clause, it will be found to bear with much force on the question, whether or not Congress have the right to advance the manufacturing interest of America, by the imposition of prohibitory, or protecting duties. The ends which the government may attempt, are plainly ascertained by the terms of the compact. The means which may be legitimately exerted, for the accomplishment of these ends, are as plainly determined and described. The phrase *useful arts*, it will be conceded, embraces and describes the manufacturing art; and it is deemed competent for Congress to *promote its progress, by securing for a time*, to any fortunate or scientific artificer, the exclusive use of all his discoveries. The interest, then, of the manufacturing art, may be promoted after the manner indicated in this clause; but the suggestion of this particular mode operates as an exclusion of all other modes; and it seems to follow as a natural consequence, that the manufacturing interest may not be promoted by the imposition of prohibitory or protecting duties.

The proceedings which were had in the Federal Convention, confirms this construction of this clause. The plan of government finally adopted, was submitted to the consideration of the Convention on the 29th May, 1787, by an honorable member from the State of South Carolina. No such clause as the one now under consideration, was contained in the original draft, nor was any such engrafted on that draft, by the select committee, to whose examination the plan was subjected. On the 18th day of August, succeeding, it was proposed to consider the propriety of conferring on the government additional powers; and among others, the following were suggested for reflection.

To give to Congress the power "to secure to literary authors, their copy rights for a limited time."

"To encourage, by proper *premiums* and *provisions*, the advancement of useful knowledge and discoveries."

"To grant patents for useful inventions."

"To establish public institutions, rewards and immunities, for the *promotion* of agriculture, commerce, *trades* and *manufactures*."

These propositions were referred to a select committee, who, after mature reflection, reported on the 5th of September following, the clause as it now stands in the body of the Constitution, investing Congress with the power "to promote the progress of science and the *useful arts*, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." It became the duty of that committee, in the examination of the subjects to them referred, to inquire into the expediency of investing Congress with powers "for the promotion" of "*manufactures*." In the event that they should find it expedient, it became their duty further to ascertain the "proper premiums and provisions," over which Congress should be invested with power; what "public institutions, rewards and immunities" Congress should be authorised to "establish" "for the promotion of agriculture, commerce, trades and manufactures;" and after due deliberation, occupying the attention of the committee from the 18th of August to the 5th of September, it was determined that the only provision which should be made, was contained in the clause which at present occupies our attention. Thus, actually rejecting the propositions which were referred, and negatively declaring their intention, that Congress should have no other power "to promote the progress" of "manufactures," than that of "securing for limited times," "to inventors, the exclusive right to their respective" "discoveries." This report was sustained by the Convention, who thereby afforded unequivocal evidence of their will and design, in relation to the subject of domestic manufactures. Manufactures had become the subject of their thoughts. They gravely deliberated on the powers necessary to be vested in the government, for the promotion of the manufacturing art, and after consultation of 17 days, solemnly determined, that the only power over the subject, which it was wise to confer on the government, was that of securing temporarily to inventors, any exclusive advantages which might result from their discoveries. Your committee cannot but regard these occurrences as a virtual, if not an actual rejection of the proposition to invest Congress with any other powers, for the promotion of manufactures. And they are, therefore, the more confirmed in their conviction, that manufactures cannot be legitimately promoted, by the imposition of prohibitory, or protecting duties.

Your committee would not rest assured of a faithful discharge of the important duties which devolve upon them, were they to withhold all comment on such clauses of the Constitution, as have been claimed to convey to Congress the right to protect domestic manufactures. The 8th section of 1st article has been relied on as conveying that right. This section provides, that "Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises, shall be uniform throughout the United States." It is insisted by the advocates of protecting duties, that Congress is invested by this clause, with unqualified power over the subject of duties and imposts; which may be well exerted for the advancement or advantage of the American manufacturer; but this proposition appears to your committee to be entirely unsustainable. So far from conveying to the government of the United States, unqualified power over the subject of duties and imposts, that government is restrained in the exercise of its power over the subject, to the accomplishment of objects enumerated in the very clause itself. The words "to pay the debts, and provide for the

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common defence and general welfare of the United States," are ascertained by the plainest rules of grammatical construction, to be a limitation on the preceding member of the sentence, restraining Congress in the exercise of the power "to lay and collect taxes, duties, imposts, and excises," to the objects of paying the debts, and providing for the common defence and general welfare of the United States. If this be true, the section contains an express enumeration of all the purposes for which the power may be exerted: the care and attention of American manufactures, are not embraced within this enumeration: and it would seem to your committee necessarily to follow, that the power conveyed by the section cannot be exerted for the protection or promotion of American manufactures.

It would be uncandid in your committee to elude or evade the examination of the question, whether or not the words "to pay the debts, and provide for the common defence and general welfare of the United States," convey to Congress distinct and substantive grants of power. The affirmative of this proposition has been maintained by the advocates of protecting duties; but your committee confess, that after the most mature deliberation, they have not been able to arrive at a similar conclusion. The collocation of the words excludes the idea of such a construction. They are inserted after the terms "duties and imposts," and are immediately succeeded by the words "but all duties, imposts and excises, shall be uniform throughout the United States." This concluding member of the section proves, that the attention of its framers had not been diverted from their primary subject. They had not introduced another subject, but were engaged in modifying, restraining or regulating the power over the subject first introduced. Their provisions were to have reference to it; there was nothing else on which they could attach; and the words "to pay the debts and provide for the common defence and general welfare of the United States," could no otherwise affect the power "to lay and collect taxes, duties, imposts and excises," than as creating a limitation, restraining Congress in its exercise, to the raising of money for the purpose of paying the debts, and providing for the common defence and general welfare of the United States. Had the Convention designed these words as conveying any substantive grant, they would have been separated by more distinct marks of punctuation. They would have been thrown into a separate sentence. This was done in every other instance. All other subjects of grants of power have been treated of in sentences. The grants and provisions on each subject, are perfected and concluded before the introduction of another subject; and it would seem to your committee to be unaccountable, if in this particular instance the Convention had introduced a distinct grant between the clause which relates to the raising of money, and an acknowledged limitation on that clause. To construe the words as containing a substantive grant of power, is to convict the framers of the Constitution of the gross impropriety of interpolating one substantive grant between another substantive grant and its acknowledged limitation. If these words, "to pay the debts, and provide for the common defence and general welfare of the United States," were designed as a limitation on the first member of the sentence, the collocation cannot be improved. They follow immediately the words which they were intended to qualify, and have a natural and obvious connexion with them.

If, on the contrary, they be designed to impart additional energies to the Government, the Convention are convicted of this confused interpolation, when by a natural transposition of the members of the sentence, the design would have been clear. The difficulty would have been rendered less, had the section been construed thus: Congress shall have power.

To lay and collect taxes, duties, imposts and excises; but all duties, imposts and excises, shall be uniform throughout the United States.

Congress shall have power to pay the debts, and provide for the common defence and general welfare of the United States.

Had this subject been thus arranged, it would have strengthened the argument for protecting duties; but, as the members of the sentence are at present disposed, to construe the words "to pay the debts, and provide for the common defence and general welfare of the United States," as conveying substantive grants, is to convict the framers of the Constitution of disjoining the limitation, "but all duties, imposts and excises, shall be uniform throughout the United States" from the power "to lay and collect taxes, duties, imposts and excises," which it was designed to limit, and of appending it to the power "to pay the debts, and provide for the common defence and general welfare of the United States," which it was not designed to affect at all. But the Convention is relieved from the imputation of these inaccuracies of composition, by giving to their proceedings their rational explication, that the latter members of the sentence were designed as limitatious on the power to raise money: The one declarative of the purposes for which it might be raised; the other prescribing that it should not be raised in unequal proportions on the several sections of the Union.

If this conviction wanted confirmation, it would be found in the history of the section, as it was originally introduced to the consideration of the Convention. It contained unlimited authority over the subject of "taxes, duties, imposts and excises." It was submitted in these words: "The Legislature of the United States shall have power to lay and collect taxes, duties, imposts and excises." In this form it was referred to a select committee, who reported it without amendment or appendage. On the 16th of August it was proposed to insert at the end of the section: "*Provided*, That no tax, duty or imposition, shall be laid by the legislature of the United States on articles exported from any State." The consideration was postponed, and the subject referred. Six days afterwards, the committee reported the section with amendments, so as to make it stand: "The Legislature of the United States shall have power to lay and collect taxes, duties, imposts and excises, *for payment* of the debts and necessary expenses of the United States, provided that no law for raising any branch of revenue, except what may be specially appropriated for the payments of interest on debts or loans, shall continue in force for more than years." Your Committee here discover the origin of the clause which relates to the payment of the debts, and the provision for the common defence and general welfare of the United States. Under the terms in which it was introduced, no doubt can exist as to its object. It was a manifest limitation on the preceding member. The power to raise money had been granted without limitation, and the amendment restrained its exercise to the raising of money "*for payment* of the debts and necessary expenses of the United States," with the addition of a proviso containing even a further limitation. On the 23d of August it was moved to amend this section so as to make it "The Legislature shall fulfil the engagements, and discharge the debts of the United States, and shall have power to lay and collect taxes, duties, imposts and excises." This motion prevailed, but was re-considered on the ensuing day, and the subject re-committed. On the 31st of August it was agreed that "duties, imposts and excises, laid by the Legislature, shall be uniform throughout the United States." This motion prevailed, but was reconsidered on the ensuing day, and the subject re-committed. On the

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4th of September, the committee fully and finally reported the section, in these words thus punctuated: "The Legislature shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States." It does not appear from the Journal of the Convention, that this part of the section ever again came under consideration, after the confirmation of this report; except that perhaps, on the 14th of September, it received as an amendment the addition of these words "but all duties, imposts and excises, shall be uniform throughout the United States." A committee of five members was appointed "to revise the style of, and arrange the articles agreed to by the House." This committee was invested with no power to adopt any amendment affecting in any manner the import of the sentence, and whatever modification it subsequently experienced, was adopted from a regard to propriety of arrangement, and accuracy of style. It is obvious from this plain relation, that the original design in introducing this member of the sentence, was the creation of a limitation on the power to raise money, prohibiting the exertion of that power, except "*for payment* of the debts and necessary expenses of the United States." This limitation was had constantly in view, and whatever modifications the language experienced, were adopted from a regard to the propriety of style.

Various and numerous are the reflections which have suggested themselves to your committee, demonstrating the truth of the proposition, that Congress cannot legitimately "lay and collect taxes, duties, imposts and excises," to advance the interest of the American manufacturer. It will not be contended, that Congress have power to impose and collect taxes or excises, to confer gratuities on any favored portion of the community; none would contend for such a power, and for the honor of the American people, it is hoped, that few would submit to its practical operation; but the power of Congress over duties and imposts, is not more ample than that over taxes and excises. The power over all is precisely the same; conferred by the very same section of the Constitution; by the use of the very same terms; under precisely the same limitations. Any object which may be accomplished or attempted, by the exertion of the power to lay and collect duties and imposts, may be as constitutionally accomplished or attempted, by the exertion of the power to lay and collect taxes or excises. The selection from among these various means, is left to the wisdom and discretion of Congress. The propriety of selecting the one or the other, must be resolved into a question of expediency, and on occasions where Congress may not select at discretion, it has no power to select at all. If then taxes and excises may not be legitimately imposed, to confer gratuities on the favorites of Government, it would seem to your committee to be difficult to demonstrate the competency of the Government to lay and collect duties and imposts, to further the interest of the American manufacturer, who, far from rendering any equivalent, for the advantage which he derives from the operation of the Tariff, occasions a great and incalculable loss to the Treasury.

Acting under the influence of these reflections, your committee are constrained to adopt the opinion, that there is nothing in this section, which confers on Congress the right to foster domestic maufactures, by the imposition of prohibitory or protecting duties.

This right has been claimed for the Government, under the clause which gives to Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

But it seems to your committee, that the authority to regulate commerce, involves no power over domestic manufactures. The phrases are entirely dissimilar, and cannot be construed as synonymous. Each is a distinct, determinate subject, and they cannot possibly be identified. Commerce being the interchange of commodities, implies the *exchange* of one thing for another, between different individuals or nations. Domestic manufactures are local establishments, founded for the *production* of commodities, and the phrase implies no *exchange* at all. The term *commerce* associates a general idea of *trade*. The term *manufactures* associates the idea of fixed, permanent, local foundations. Commerce supplies to the American citizen, in return for the product of his labor, the varied products of distant climes. Manufactures convert his raw material into fabrics for consumption. Sophistry itself cannot identify things thus substantive and distinct; nor render synonymous the terms or phrases by which they are represented. Yet the argument which derives the power to protect domestic manufactures from the power to regulate commerce, does indeed identify the subjects, and render the terms substantially synonymous.

The power, too, to regulate commerce, was granted with a view to its perfection. Independent of the consideration of revenue, it was delegated to secure the most advantageous arrangements in foreign trade, and to ensure domestic tranquility, by extinguishing all subjects of cavil among the States, originating in particular conflicting legislation. But the policy of the protecting duty's system, is by no means the advancement of commercial interest. Its object is to extinguish foreign trade; whilst it surely disturbs domestic tranquility, by furnishing a subject of loud and heavy complaint, of severe and angry recrimination. To derive, then, the right to protect domestic manufactures, from the power to regulate commerce, would be to pervert the design of the framers of the Constitution, defeat the ends of the instrument itself, and to establish the paradoxical proposition, that it is the same thing to perfect and to destroy.

Having concluded this minute examination of the several clauses of the Constitution, which were supposed to refer to the subject of protecting duties, or which have been claimed to have such reference, your committee find themselves occupying a position whence they may proceed with greater advantage to the contemplation of this momentous subject. The great design of the Federal Compact, as conceived by the wisdom of its illustrious authors, was the establishment of a Government competent to combine the energies of the several States, for the purposes of mutual and reciprocal safety and protection, against foreign insult and aggression: a government, adequate to secure the harmony and tranquility of America, by exterminating all subject of feud, and interposing its friendly and impartial adjudication, on occasion of cavil or dispute among the States. Experience had shewn to our sagacious Statesmen, that these were subjects of a general concern, in which the States held a common interest; the advantages of which were mainly sacrificed, by the particular conflicting legislation of the States. The jurisdiction over these, it was obviously proper to vest in some common tribunal, having authority to legislate for the general weal, and in relation to these subjects, to secure the greatest possible advantages, to the common family of American States. The difficulty and delicacy of erecting such a tribunal, with powers adequate to these ends, yet so constructed as to ensure the perpetual independence of the States, with unimpaired authority over all other subjects, forcibly suggested itself to

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the sagacity of those who then controuled the destinies of America. They despaired of this vast achievement, by the efforts and under the sanctions of individual man, and wisely determined to bring to its accomplishment, the energies and sanctions of independent sovereignties.

Your committee will not impose on themselves the labor of compiling an historical sketch of the transactions which induced the foundation of the Federal Government. This history, it is presumed, is familiar to all. In conformity with arrangements previously understood, the distinct and independent States of America assembled in General Convention at Philadelphia, and in their sovereign, corporate characters, proceeded to consider the nature of the Compact, which it might be deemed wise to establish among themselves. All the proceedings which were then had, were dispatched in their characters of sovereign States, and a Government was instituted, not sustained by the sanction of a majority of the people of America, but by the sanctions of the people of the several States. The plan of Government then established, was conformable to suggestions heretofore made. Each of the sovereignties then assembled, determined to cede to the Federal Government, certain portions of its sovereignty, reserving the residue unimpaired. In the cessions which were made, the Government was enabled to concentrate the whole strength of the Union, for the assertion and vindication of our national rights. It was invested with sufficient power to tranquilize disturbances among the States; together with a general jurisdiction, over such matters of general concern, as involved the common interests of the States, but which could not be wisely arranged, by the rival, partial, and conflicting legislation of the particular States. The jurisdiction over all other subjects was expressly reserved to the States respectively. All subjects of a local nature, the internal police of the States, the jurisdiction over the soil, the definition and punishment of crime, the regulation of labor, and all subjects which could be advantageously disposed by the authority of a particular State, were reserved to the jurisdiction of the State Governments. The wisdom of this regulation will not be questioned; for, it surely must be sufficiently obvious, that to subject our local or domestic affairs to any other authority than our own Legislature, would be to expose to certain destruction the happiness and prosperity of the people of Virginia. This principle was accordingly established:—That all subjects of a general nature should be confided to the Federal Government, whilst those which were local in their character, were reserved for the jurisdiction of the States respectively.

This distribution of political power having been established by the Constitution, the happiness and prosperity of the American people demand that it should be preserved. The theory of government as established in America, contemplates the Federal and State Governments as mutual checks on one another, constraining the various authorities to revolve within their proper and constitutional spheres. Each Government is invested with supreme authority, in the exercise of its legitimate functions, whilst the authority of either is wholly void, when exerted over a subject withheld from its jurisdiction. Should either depository of political power, unhappily be disposed to disregard the Constitution, and destroy the proportions of our beautiful theory, it devolves upon the other to interpose, as well from a regard to its own safety, as for the perpetual preservation of our political institutions. If there be a characteristic of the Federative system, peculiarly entitled to our admiration, it is the se-

curity which is found for individual liberty in the separate energies of distinct Governments, uniting and co-operating for the public good; but separating and conflicting, when the object is evil. This inherent characteristic of the Federative system, was contemplated with the most anxious solicitude by the founders of the Federal Republic. It was in it, that they found the general interests of America preserved from the clash of particular legislation; it was by it, that they fortified our domestic concerns from the invasions and infractions of Federal authority. It was by it, that their fears were calmed and subdued, on the great question of adoption or rejection, when the very being of the Federal Constitution depended on the determination of the several States. The history of that eventful period discloses the apprehensions of illustrious sages, lest the sacred liberty of the American citizen should be invaded by the arbitrary acts of the General Government; and that these apprehensions could only be allayed by the assurance and conviction, that the State Governments were adequate to the resistance of Federal encroachments. The Legislatures, then, of the several States, are contemplated by the theory of American Government, as the guardians of our political institutions; and whenever their proportions are destroyed or violated, it becomes the duty of the several Legislatures calmly and temperately to attempt their restoration.

The reflections in which your committee have indulged, constrain them to express their unfeigned regret that the Government of the United States, by extending its influence to Domestic Manufactures, has drawn within its authority a subject over which it has no controul, according to the terms of the Federal Compact; and that this influence has been exerted after a manner alike dangerous to the sovereignty of the States, and injurious to the rights of all other classes of American citizens.

Acting under the influence of these reflections, your committee have contemplated with the deepest interest the situation of the General Assembly, and the duties which devolve upon that body. They cannot suppress their solemn conviction, that the principles of the Constitution have been disregarded, and the just proportions of our political system disturbed and violated by the General Government. The inviolable preservation of our political institutions, is entrusted to the General Assembly of Virginia, in common with the Legislatures of the several States; and the sacred duty devolves upon them, of preserving these institutions unimpaired. Yet an anxious care for the harmony of the States, and an earnest solicitude for the tranquility of the Union, have determined your committee to recommend to the General Assembly, to make another solemn appeal to those with whom we unhappily differ; and that the feelings of Virginia may be again distinctly announced, they recommend the adoption of the following resolutions.

1. *Resolved, as the opinion of this Committee,* That the Constitution of the United States, being a Federative Compact between sovereign States, in construing which no common arbiter is known, each State has the right to construe the Compact for itself.

2. *Resolved,* That in giving such construction, in the opinion of this committee, each State should be guided, as Virginia has ever been, by a sense of forbearance and respect for the opinion of the other States, and by community of attachment to the Union, so far as the same may be consistent with self-preservation, and a determined purpose to preserve the purity of our Republican Institutions.

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3. *Resolved*, That this General Assembly of Virginia, actuated by the desire of guarding the Constitution from all violation, anxious to preserve and perpetuate the Union, and to execute with fidelity the trust reposed in it by the people, as one of the high contracting parties, feels itself bound to declare, and it hereby most solemnly declares, its deliberate conviction, that the Acts of Congress, usually denominated the Tariff Laws, passed avowedly for the protection of Domestic Manufactures, are not authorised by the plain construction, true intent and meaning of the Constitution.

4. *Resolved, also*, That the said Acts are partial in their operation, impolitic and oppressive to a large portion of the people of the Union, and ought to be repealed.

5. *Resolved*, That the Governor of this Commonwealth be requested to communicate the foregoing preamble and resolutions to the Executive of the several States of the United States, with the request that the same be laid before their respective Legislatures.

6. *Resolved*, That the Governor be further requested, to transmit copies of the same report and resolutions to the Senators and Representatives of Virginia in the Congress of the United States, with a request to the Representatives, and instruction to the Senators, that the same be laid by them before their respective Houses.

Agreed to by the House of Delegates.

GEORGE W. MUNFORD, C. H. D.

February 21*st*, 1829.

Agreed to by the Senate.

ADDISON HANSFORD, C. S.

February 24*th*, 1829.

RESOLUTIONS ON THE CONSTITUTION OF THE U. STATES AND THE POWERS OF THE GENERAL GOVERNMENT.

(See Pamphlet Laws, Reports and Resolutions of 1830 *p. 59.)*

In the Senate, December 16, 1830.

Resolved, That the Legislature of the State of South Carolina doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression, either foreign or domestic, and that they will support the government of the United States in all the measures warranted by the former.

Resolved, That this Legislature most solemnly declares a warm attachment to the Union of these States, to maintain which it pledges all its powers; and that for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence, and the public happiness.

Resolved, That this Legislature doth explicitly and peremptorily declare, that it views the powers of the Federal Government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact; and in case of a deliberate and palpable and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authori ties, rights and liberties, appertaining to them.

Resolved, That the several States comprising the United States, are not united upon the principle of unlimited submission to their General Government; but by compact, under the style and title of the Constitution of the United States, and of amendments thereto, they constituted a government for special purposes; delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are unauthorized, void, and of no force. That to this compact each State acceded as a State, and as an integral party. That the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers: but that, as in all other cases of compact between parties, having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

Resolved, That this Legislature doth also express its deep regret that a spirit has, in sundry instances, been manifested by the Federal Govern-

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ment, to enlarge its powers, by forced constructions of the constitutional charter which defines them, and that indications have appeared of a design to expand certain general phrases (which having been copied from the very limited grant of powers in the former articles of confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and to pervert certain specified grants of power from their true and obvious meaning, to purposes never contemplated by the authors of the Constitution or the States when they adopted it; and so to consolidate the States, by degrees, into one sovereignty; the obvious tendency and inevitable result of which, would be to transform the present republican system of the United States into an absolute government without any limitation of power.

Resolved, That the several acts of the Congress of the United States, now of force, imposing duties upon imports, for the protection of domestic manufactures, have been and are, deliberate and highly dangerous and oppressive violations of the constitutional compact, and that whenever any State, which is suffering under this oppression, shall lose all reasonable hope of redress from the wisdom and justice of the Federal Government, it will be its right and duty to interpose, in its sovereign capacity, for the purpose of arresting the progress of the evil occasioned by the said unconstitutional acts.

Resolved, That the Senate do agree to the resolutions. *Ordered*, That they be sent to the House of Representatives for concurrence.

By order of the Senate,

JACOB WARLEY, C. S.

In the House of Representatives, December 17, 1830.

Resolved, That the House do concur in the resolutions. *Ordered*, That they be returned.

By order of the House,

R. ANDERSON, C. H. R.

REPORT OF THE COMMITTEE ON FEDERAL RELATIONS,

CONCERNING A LETTER FROM GENERAL JACKSON, PRESIDENT OF THE UNITED STATES.

14th DECEMBER, 1831.

(See Pamphlet Laws, Reports and Resolutions of 1831, *p. 57.)*

House of Representatives, December 14, 1831.

The Committee on Federal Relations, to whom was referred that portion of the Governor's Message relating to a letter from the President of the United States, of the date of June 14*th* 1831, *in answer to a letter from the "Union and States Rights Party" of Charleston, dated 5th June* 1831, *inviting him to visit that city and unite with them in celebrating the anniversary of American Independence—beg leave to*

REPORT,

That in the examination of the matter referred to them, they have endeavored as far as possible to subdue all feelings which might disturb their investigation, or throw suspicion upon their conclusions. Suppressing all emotions of State pride, and the natural indignation which a menace of violence and punishment excites, they have been disposed to regard the President's letter as involving important questions of constitutional law, and the bearing which such principles, and such an avowal of them, has upon the permanence and freedom of this confederacy.

A preliminary question, without the decision of which it would be inconsistent with the dignity and self respect of the Legislature to proceed, is, in what capacity or character has General Jackson denounced the existence of a plan of disorganization in South Carolina. With his private opinions and sympathies the Legislature would not concern itself. Whatever exclusively appertains to the individual, must be left to individual censure or approbation—but whatever the *officer* determines on, and sends forth to the world, as his determination, becomes at once a matter of consequence—and justifies, or, as in the present instance, demands the animadversion of this State. That General Jackson spoke, and intended to be understood, as speaking in his official character as President of the United States, is apparent from his language. His "high and sacred duties" can be none other but official duties, to the official performance of which he emphatically pledges himself. It was doubtless understood and intended that this solemn declaration should be laid before the public, and be received as a warning of the course the

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President has marked out for himself. Whether the occasion was a fit one for denunciation of his fellow-citizens, or the official avowal of his course of action upon what all must admit to be the highest and most responsible of his functions, was of course a matter for his own consideration, and can afford no light in determining the character of the act. The committee, therefore, cannot but regard it as the annunciation to the world by the President of the United States, that there is a plan of disorganization existing in South Carolina, against which, as chief executive of the United States, he has resolved to present an unsurmountable barrier.

If there be a plan of disorganization within the State of South Carolina, known to the President of the United States, it would seem to be within the scope of his high and sacred duties, to inform the constituted authorities of this State, of its nature and extent, and lay before them the testimony to convict the disorganizers. It is not less the high and sacred duty of the constituted authorities of the State, than of the President of the United States, to interpose an "insurmountable barrier," against whatever endangers the existence of the government. Nor is it to be presumed that any department of this government, either legislative, judicial or executive, would be less sensible to the influence of those duties, than the corresponding department of the General Government. But if the President alludes, as the committee do not doubt he does, either to the public avowal and discussion of certain constitutional principles, or to the proposed action of this government upon them, it becomes a serious question, whether this interference of the President does not lead more directly to disorganization than the plan which he denounces.

The Constitution of the United States guarantees to the citizen, freedom of speech and of the press. Whatever opinions he may choose to entertain he may dare to express. Error of opinion, said Mr. Jefferson, may be tolerated, when reason is left free to combat it.

When one of the earlier Presidents supposed that he had detected a plan of disorganization in the unrestrained freedom of speech and the press—he procured from a subservient Congress a law to assist him in the exercise of his high and sacred duties—but both he and the law were swept away by the indignation of the country. Those who have once experienced the benefits of free discussion will never consent to forego them. It is the tenure by which free principles are held, and is dangerous only to tyrants. Under a form of government certainly not so free as our own, upon a recent occasion, an attempt of the executive to check the freedom of discussion, hurled him from his throne and brought his advisers and agents, as culprits to a public trial. The citizens of this country will not consent to be driven from this high privilege by threats or force. Even if their purpose be to effect a change or abolition of the government, by means of public opinion, they may safely do so under the fundamental maxim, that it is the right of the people to alter or abolish a government when it is destructive of the ends for which it is created, and no high and sacred duties of any public functionary can rightfully interpose.

No written form of government can be devised which may not be liable to various constructions; no free government can exist without party differences. Hitherto the wise and patriotic men who have administered the general government, have been careful—as well from a sense of official dignity as from the more important consideration of the dangerous weight of official authority—not to mingle in the party contests of the citizens. It is not only calculated to excite regret, but other feelings,

which the committee will not trust itself to express, that the State of South Carolina has been selected for the first instance of this unauthorized intrusion; as the first example of an attempt to close political discussion by the terror of executive power; or to throw into the scale of party the weight of the executive sword. While as a member of this confederacy, and anxious for the dignity of its chief executive, the State of South Carolina cannot but regret every occurrence which may degrade that dignity; yet her feelings are of a sterner and deeper character; when her citizens within her own jurisdiction, in the exercise of unquestionable constitutional rights, are denounced as disorganizers, and threatened with military interference. Whatever emotions, however, there may be, they are not those of terror; ours is a government of law and not of force—of opinion, not of will. In the absolute supremacy of the law, we know that a President or a private citizen is equally amenable to its tribunal, and that a threat from either against the other, is of equal validity.

If, however, the allusion of the President be not to the public discussion of opinions differing from his own, then it must be to a proposed course of legislative action, which he denounces as a plan of disorganization. In this view of the Presidents letter, the legislature has to consider, not an invasion of the rights of the citizens merely, but an attempt to fetter its own freedom of action.

The committee finds it difficult to find language at once suitable to the occasion and the dignity of this House.

Is this legislature to be schooled and rated by the President of the United States?

Is it to legislate under the sword of the Commander-in-Chief?

Is the will of one man to be substituted for deliberation—and the enactments of this body to be fashioned by an edict from a President, not only avowing a right to annul a law when passed, but practically assuming the right to interpose while it is yet under discussion? The executive of a most limited government; the agent of an agency, but a part of a creature of the states, undertakes to prescribe a line of conduct to a free and sovereign State, under a denunciation of pains and penalties. It cannot but be esteemed a signal instance of forbearance, calmly to enquire into this assumed power of the President over the States. Under no part of the Constitution, or penal law of Congress, known to the Committee, is the crime of disorganization recognized or made punishable. It is to be lamented, that in denouncing a crime and threatening punishment, the President had not used terms of more definite import.

If by the vague generality of the word disorganization, be intended, as the context may perhaps indicate, that a plan of disunion existed in this State, it will be equally difficult to fix upon any constitutional or legal authority, or any thing in the nature of our institutions, which imposes any duty or grants any power to the President to prevent it. This is a confederacy of sovereign States, and each may withdraw from the confederacy whenever it chooses; such proceedings would neither be treason nor insurrection nor a violation of any portion of the Constitution. It is a right which is inherent in a sovereign State, and has not been delegated by the States of this Union. Whether assuming such an attitude might be cause of war on the part of the general government, may be questioned, but there can be no question that the President could not declare war. But the Committee deem it unnecessary to discuss a mere hypothetical question, the possible occurrence of which, if the President

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has contemplated it, is the result of his entire ignorance of the feelings and purposes of this State.

No one denies that it is his right and duty to see that the laws of the United States are faithfully executed, and no portion of the Union will be more prompt to recognize the right, or to sustain and assist him in the duty, than the State of South Carolina—but at the same time, if in the deliberate judgment of the State, acting in her sovereign capacity, any enactment in Congress is decided to be in violation of the constitution, and therefore not law—that judgment is paramount; and if the executive, or all the combined departments of the General Government, endeavour to inforce such enactment, it is by the law of tyrants, the exertion of brute force. If such a case should occur, which we pray a wise providence to avert, the State will throw herself on the protection of that providence, and if her destiny be slavery, she will not be mocked by the forms of a free government.

Resolved, That the letter of the President of the United States, to sundry citizens of this State, is an unauthorized interference in the affairs of this State; that the principles advanced in it are incompatible with the constitution, and subversive of the rights of the State—that the threatened course of executive conduct would, if acted upon, destroy the liberties of this country, and as a threat, is of dangerous precedent, highly repulsive to the feelings of a free people.

Resolved, That whilst we condemn the conduct of the President of the United States, when he is in error, we are willing to approve it, when, in our opinion, he is right; and that we regard with high gratification the sentiment expressed in his late message, that the Tariff ought to be reduced to the wants of the Government, and recognize in it the just response to the solemn resolutions of this Legislature.

Resolved, That the House do agree to the report. Ordered that it be sent to the senate for concurrence.

By order of the House, R. ANDERSON, C. H. R.

In the Senate, December 17, 1831.

Resolved, That the Senate do concur. Ordered to be returned to the House.

By order of the Senate, JACOB WARLEY, C. S.

DOCUMENTS RELATING TO THE *CONVENTION.*

FIRST SESSION, WHICH BEGAN NOVEMBER 19, 1832.

AN ACT TO PROVIDE FOR THE CALLING OF A CONVENTION OF THE PEOPLE OF THIS STATE.

Whereas, the Congress of the United States hath, on divers occasions, enacted laws laying duties and imports, for the purpose of encouraging and protecting domestic or American manufactures, and for other unwarrantable purposes; which laws, in the opinion of the good people of this State, and the Legislature thereof, are unauthorized by the Constitution of the United States, and are an infringement of the rights reserved to the States respectively, and operate to the grievous injury and oppression of the citizens of South Carolina: And *whereas*, to the State, assembled in Convention, it belongs to determine the character of such acts, as well as the nature and extent of the evil, and the mode and measure of redress.

SECTION 1. *Be it therefore enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and it is hereby enacted by the authority of the same*, That a Convention of the People of the said State shall be assembled at Columbia, on the third Monday in November next, then and there to take into consideration the several acts of the Congress of the United States, imposing duties on foreign imports, for the protection of Domestic Manufactures, or for other unauthorized objects; to determine on the character thereof, and to devise the means of redress; and further, in like manner to take into consideration such acts of the said Congress, laying duties on imports, as may be passed in amendment of, or substitution for, the act or acts aforesaid; and also, all other laws and acts of the government of the United States, which shall be passed or done for the purpose of more effectually executing and enforcing the same.

SEC. 2. *And be it further enacted by the authority aforesaid*, That on the second Monday in November next, and on the day following, the managers of elections for the several districts in this State, shall, after giving public notice, as in the cases of elections for members of the Legislature, open the polls and hold elections in their repective districts, for Delegates to the said Convention, in all respects in the same manner and form, and at the same places, as elections are now conducted for members of the Legislature: And all persons who are qualified and entitled, by the Constitution and laws of this State, to vote for members of the Legislature, shall be qualified and entitled to vote for said Delegates to said Convention; and in case of any vacancy occurring by death, re-

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signation, removal from the State, or refusal to qualify, of any person elected a Delegate to the said Convention, the presiding officer of the said Convention shall issue his writ authorizing and requiring the managers of elections, in the election districts in which such vacancy may happen, after giving due notice thereof, to open a poll and hold an election to fill such vacancy, as in cases for the election of members of the Legislature.

SEC. 3. *And be it further enacted by the authority aforesaid*, That each election district throughout the State, shall be entitled to elect and send to the said Convention a number of Delegates equal to the whole number of Senators and Representatives which such district is now entitled to send to the Legislature; and the Delegates to the said Convention shall be entitled to the same freedom from arrest in going to, returning from, and whilst in attendance on said Convention, as is extended to the members of the Legislature.

SEC. 4. *And be it further enacted by the authority aforesaid*, That all free white male citizens of this State, of the age of twenty-one years and upwards, shall be eligible to a seat in said Convention.

SEC. 5. *And be it further enacted by the authority aforesaid*, That the said Convention may be continued by adjournments, from time to time, so long as may be necessary for the purposes aforesaid: *Provided, however*, that unless sooner dissolved by their own authority, the said Convention shall cease and determine in twelve months from the day on which the delegates to the same were elected.

In the Senate House, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and thirty-two, and the fifty-seventh year of the Independence of the United States of America.

H. DEAS, *President of the Senate.*

H. L. PINCKNEY, *Speaker of the House of Representatives.*

NOTE.

This measure originated in the Senate, where a committee was appointed on the subject. That Committee reported the 3d of December, 1830, by Mr. Seabrook, their Chairman, by Bill, wherein, after providing for the calling of a Convention, the two following, (being the 2 last) clauses are inserted, viz:

AND BE IT FURTHER ENACTED, That the said Convention when assembled, shall take into consideration such acts and laws of the Government of the United States as this Legislature hath from time to time declared and pronounced to be unauthorized by the Constitution of the United States; and against which it hath protested as an infringement of rights which by the said Constitution are reserved to the States and can be legitimately exercised by them only: and such other acts and laws of the General Government, as the said Convention may declare unconstitutional in their enactments, and dangerous in their tendency. And that the said Convention shall adopt such mode and measure of redress for the evils arising from the unconstitutional legislation of Congress, as it may deem necessary and proper to protect the rights of the State of South Carolina, to preserve the federal constitution, and cement the Union of the States.

AND BE IT FURTHER ENACTED, That the Delegates elected to the said Convention, before they take their seats, in addition to the oath required to be taken by members of the Legislature, shall take the following oath; "I swear, (or affirm) that I will not in the discharge of my duty as a member of this Convention, take into consideration any other matters, or engage in the discussion of any other propositions, than such as relate to the unconstitutional legislation of the Congress of the United States: and that I will not concur in the adoption of any other measures than such as may be intended to provide a remedy for the evils arising therefrom."

This measure did not originate exclusively in the Senate, but was taken up as an original measure also, in the House of Representatives. The Bill finally passed, did not and does not contain any such restriction as is proposed in the last clause of Mr. Seabrook's Bill. The Legislature sanctioned no positive restriction on the powers of the Convention. Still the question was made while the Convention sat, whether that body was empowered to take up any other subject, or pass upon any other measure, than what had been specifically and expressly submitted to them by the Legislature. On the one hand it was urged, that as the Convention met under the authority of the legislative call alone, the objects that the Legislature had in view, and which alone gave rise to the call of the Legislature, were the only subjects the Convention could properly discuss: that an unbounded license of Conventional legislation, was inconvenient and dangerous; it might produce utter confusion in the State, and amount in fact to heedless and uncalled-for revolution in the Government, which the people neither expected or were prepared for: that no member of the Legislature would deliberately sanction the meeting of a Convention, if this were to be the result of it; nor would the meeting of a Convention be sanctioned by the voice of the people if such were to be the unexpected effect. On the other hand, it was replied that these were very proper arguments to be submitted to the wisdom and discretion of the Convention, and would doubtless have sufficient weight to repress all vague and needless legislation in that body; that the Convention was in fact the people, acting by a wise and cautious representation, fully aware of their own responsibility, and the extent of their own powers; nor was there any good reason why a Convention of the people could not be as safely trusted as a legislative body; or why the people should be deemed incapable of the full management of their own business unless checked and reined in by legislative limitation and controul; that the attempt was in direct hostility to the acknowledged principles of republican government, by which the Convention was regarded as the authority paramount, and the Legislature itself a derivative authority only, an emanation from, and the creature of a Convention. Such a claim set up by the Legislature, was the claim of authority by an Overseer, to direct the owner of the Plantation who paid and employed him, how, and when, and to what extent that owner might manage his own business; that the business about which the Convention would meet, was of too much moment to admit of any reasonable apprehension that the time of the Convention would be wasted on minor matters.

In fact, the Legislature had before them two Bills for the call of a Convention; one from the Senate, specific AND EXCLUSIVE; the other, originating in the House of Representatives, specific as to the objects that required consideration, but NOT EXCLUSIVE—they adopted the latter. The inference was plain, that the Legislature was averse to exercising any controul over the Convention.

The subject, however, can hardly be said to be at rest, and therefore the Editor has subjoined this brief view of the question. EDIT.

REPORT OF THE COMMITTEE,

To whom was Referred the Act to Provide for the calling of a Convention of the People of this State, &c.

(See Journal of the Convention, p. 27.)

The Committee to whom was referred "the Act to provide for the calling of a Convention of the People of this State," with instructions "to consider and report thereon, and especially as to the measures proper to be adopted by the Convention, in reference to the violations of the Constitution of the United States, in the enactment by Congress, on divers occasions, of laws laying duties and imposts, for the purpose of encouraging and protecting domestic manufactures, and for other unwarrantable purposes," beg leave respectfully to submit the following

REPORT.

The Committee, deeply impressed with the importance of the questions submitted to them, and the weight of responsibility involved in their decision, have given to the subject their most deliberate and anxious consideration. In stating the conclusions to which they have arrived, they feel that it is due to themselves, to this convention, and to the public at large, briefly, to review the history of the Protecting System in this country, to show its origin, to trace its progress, to examine its character, to point out its evils, and to suggest the appropriate remedy. They propose to execute this task with all possible brevity and simplicity, sensible that the subject is too well understood in all its bearings, to require at this time a very elaborate investigation.

In the natural course of human affairs, the period would have been very remote when the people of the United States would have engaged in manufactures, but for the restrictions upon our commerce which grew out of the war between Great Britain and France, and which led to the non-intercourse act, the embargo, and finally our own war of 1812. Cut off by these events, from a free commercial intercourse with the rest of the world, the people of the United States turned their attention to manufactures, and on the restoration of peace in 1815, an amount of capital had been already invested in these establishments, which made a strong appeal to the liberality—we might almost say, to the justice of the coun-

try, for protection; at least against that *sudden influx* of foreign goods, which, it was feared, would entirely overwhelm these domestic establishments. When, therefore, in 1816, it became necessary that the Revenue should be brought down to the peace establishment, by a reduction of the duties upon imports, it was almost by common consent conceded to the claims of the manufacturers, that this reduction should be gradual; and three years were accordingly allowed for bringing down the duties to the permanent revenue standard, which (embracing all the ordinary expenses of the Government, with liberal appropriations for the Navy and the Army, an extensive system of fortifications, and the gradual extinction of the public debt, then amounting to 130,000,000) was fixed at 20 per cent. If the manufacturers had at that time even hinted that permanent protection was deemed indispensable to their success—if the slightest suspicion had been entertained that instead of the gradual reduction expressly provided for by the act of 1816, there would be claimed a gradual increase of the protecting duties, and that instead of being brought down in three years to 20 per cent, the duties were to be carried up to 50 or 100 per cent, and in many cases to prohibition, the painful contest in which the country has been engaged for the last ten years on this subject, would have commenced immediately; and it is confidently believed that in the temper of the public mind at that time, ample security would have been found against the introduction of such a system. But in defiance of the clear understanding of the whole country, and in violation of the principles of justice and of good faith, that part of the act above mentioned which required that the duties should be reduced in three years to 20 per cent, was repealed, and a broad foundation thus laid for the permanent establishment of the protecting system. This system has been still further extended and fortified by the several successive acts of 1820, 1824, and 1828, until, by the passing of the act of 1832, (to take effect after the discharge of the public debt) it has become incorporated into our political system as the "SETTLED POLICY OF THE COUNTRY." We have not deemed it necessary, in tracing the origin and progress of this system, to go further back than the commercial restrictions which preceded the late war:—for whatever theoretical opinions may have been expressed by Alexander Hamilton and others in relation to it, at an earlier period, it cannot be denied that no duties were actually imposed beyond those deemed indispensable for the public exigencies, and that prior to the year 1816, no protection whatever was actually extended to manufactures, beyond what was strictly incidental to a system for revenue. The discrimination between the *protected* and *unprotected* articles, now contended for as the corner stone of the protecting system, was so far from being established by that act, that the highest duties were actually imposed on the very articles now admitted duty free; while the foreign manufactures which came into competition with our domestic fabrics were subjected to a lower rate of duty. The truth then unquestionably is, that the protecting policy, according to the principles now contended for, was never introduced into this country until the period we have mentioned, when it crept insidiously into the legislation of Congress in the manner above mentioned. This will be made abundantly manifest to every one who will take the pains to trace the progress of the duties from 7½ per cent in 1790—up to 25 per cent in 1816; 40 per cent in 1824, and 50—60, and even 100 per cent in 1828 and 1832; and who will merely examine the manner in which these duties were adjusted in the various acts here referred to. As early as 1820,—so soon, indeed, as the capitalists who had relied upon the powers of the Federal Government to enhance the profits of their investments

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are seen courting the imposition of taxes, and crying out against any material reduction of the public burdens? Does not this extraordinary fact afford conclusive evidence that high duties operate as a bounty to Northern industry; and that whatever taxes the manufacturers may pay, as consumers, they are more than remunerated by the advantages they enjoy as producers? or, in other words, that they actually receive more than they pay, and therefore cannot be justly said to be taxed at all. When, in addition to all this, we take into consideration that the amount of duties annually levied for the protection of manufactures, beyond the necessary wants of the Government, (which cannot be estimated at less than 10 or 12,000,000) is expended almost exclusively in the Northern portion of the Union—can it excite any surprise, that under the operation of the Protecting System, the manufacturing States should be constantly increasing in riches and growing in strength, with an inhospitable climate and barren soil, while the Southern States, the natural garden of America, should be rapidly falling into decay? It is contrary to the general order of Providence, that any country should long bear up against a system, by which enormous contributions raised in one quarter, are systematically expended in another. If the sixteen millions of dollars now annually levied in duties on the foreign goods received in exchange for Southern productions, were allowed to remain in the pockets of the people, or by some just and equal system of appropriation could be restored to them, the condition of the plantation States would unquestionably be one of unexampled prosperity and happiness. Such was our condition under a system of free trade, and such would soon again be our enviable lot. Of the results which would thereby be produced, some faint conception may be formed by imagining what would be the effect upon the industry of the people of our own state, if the $8,000,000 of foreign goods now annually received in exchange for our productions, and paying duties to the amount of upwards of $3,000,000, could be obtained by us, duty free, or the duties thus levied were expended within our own limits. Is it not obvious that several millions per annum would thereby be added to the available industry of South Carolina? the effect of which would assuredly be, to change the entire face of affairs in this state, by enhancing the profits of the agriculturalist, accumulating capital, giving a fresh impulse to commerce, and producing a vivifying influence upon every department of industry, the happy consequences of which would be experienced by every inhabitant of the State. We present this strong view of the subject, to show the manifest justice of the claim which South Carolina now sets up, to have this system of raising revenue by duties upon imports *restricted within the narrowest limits*, and to show how utterly impossible it is for us to consent to have it extended beyond the indispensable wants of the government, either for the purpose of affording protection to the industry of others, or of distributing the proceeds among individuals or States.

Grievous, however, as the oppression unquestionably is, and calculated, in the strong language of our own Legislature, "to reduce the Plantation States to POVERTY and UTTER DESOLATION," it is not in this aspect that the question is presented in its most dangerous and alarming form. It is not merely that Congress have resorted for unwarrantable purposes to an oppressive exercise of powers *granted* to them by the Constitution; but that they have *usurped a power not granted*, and have justified that usurpation on principles which, if sanctioned or submitted to, must entirely change the character of the Government, reduce the Constitution to a dead letter, and on the ruins of our confederated republic, erect a

consolidated despotism, "without limitation of powers." If this be so, there is no man who is worthy of the precious heritage of liberty derived from our ancestors, or who values the free institutions of his country, who must not tremble for the cause of freedom, not only in this country, but throughout the world, unless the most prompt and efficient measures are at once adopted, to arrest the downward course of our political affairs, to stay the hand of oppression, to restore the Constitution to its original principles, and thereby to perpetuate the Union.

It cannot be denied that the Government of the United States possesses no inherent powers. It was called into being by the States. The States not only created it, but conferred upon it all its powers, and prescribed its limits, by a written charter called the Constitution of the United States. Before the Federal Government had thus been called into being, the several States unquestionably possessed as full sovereignty, and were as independent of each other, as the most powerful nations of the world; and in the free and undisputed exercise of that sovereignty, they entered into a solemn compact with each other, by which it was provided, that for certain specified objects, a General Government should be established with strictly limited powers; the several States retaining their sovereignty unimpaired, and continuing to exercise all powers not expressly granted to the Federal Government.

In the clear and emphatic language of Mr. Jefferson, "the several States composing the United States of America, are not united on the principle of unlimited submission to the General Government, but by a compact, under the style and title of the Constitution of the United States, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each State to itself the residuary mass of right to their own self-government; and whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force."* That such is the true nature of the federal compact, cannot admit of a reasonable doubt, and it follows of necessity, that the Federal Government is merely a joint agency, created by the States—that it can exert no power not expressly granted by them, and that when it claims any power, it must be able to refer to the clause in the charter which confers it. This view of the Constitution of the United States, brings the question of the constitutionality of the Tariff within the narrowest limits.

The regulation of *domestic industry*, so far as Government may rightfully interfere therewith, belonged to the several States before the Constitution was adopted, or the Union sprang into existence; and it still remains exclusively with them, unless it has been expressly granted to the Federal Government. If such a grant has been made, it is incumbent on those claiming under it, to point out the provision in the Constitution which embraces it. It must be admitted that there is not a clause or article in that instrument, which has the slightest allusion, either to manufactures or to agriculture: while, therefore, the "regulation of commerce" is expressly conferred on the General Government, the regulation of every branch of domestic industry is reserved to the several States, exclusively, who may afford them encouragement, by pecuniary bounties, and by all other means not inconsistent with the Constitution of the United States. To say that the power to regulate commerce, embraces the regulation of agriculture and manufactures, and all the other pursuits

* See Kentucky Resolutions of 1798.

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of industry, (for they all stand upon the same footing,) is to confound the plainest distinctions, and to lose sight of the true meaning and intent of the grant in question. Commerce is, in general, regulated by treaties with foreign nations; and, therefore, it was deemed necessary that this power should be confided to the General Government; but agriculture, manufactures, and the mechanic arts, can only be wisely ordered by municipal regulation. Commerce is one object of legislation, manufactures another, agriculture a third; and if the regulation of commerce implies an unlimited controul over every thing which constitutes the object of commerce, it would follow, as a matter of course, that the Federal Government may exert a supreme dominion over the whole labor and capital of the country. This would transform our confederated Government with strictly limited powers, into an absolute despotism, and of the worst sort, where, under the forms of a free Government, we should have the spirit of a despotic one. This view of the subject we should deem perfectly conclusive, even if it could not be shown that the power in question, so far from being granted, was purposely withheld from the Federal Government, by the framers of the Constitution; and that there are provisions of the Constitution, from which it may be fairly inferred, that it was intended to be reserved to the States respectively. It appears from the history of the proceedings of the Convention which framed the Constitution, that the subject of the PROTECTION of *manufactures*, was several times brought distinctly to the view of that body, and that they did not see fit to grant to the Federal Government the power in question. In the original proposition to confer on Congress the power to impose "duties, imposts and excises," was embraced "*prohibitions* and *restraints*," which may well be supposed to be intended to embrace the protection of manufactures; but it is remarkable, that these words were omitted in the Report of the Committee, on that clause. On the 18th of August a motion was made, "to establish reward and immunities, for the promotion of agriculture, commerce, trades and *manufactures*;" but this proposition also failed. On a subsequent day, it was moved that there should be a "Secretary of Domestic Affairs, &c. whose duty it should be to attend to matters of general police, the state of *agriculture* and *manufactures*, the opening of roads and navigation, and facilitating of intercourse through the United States; and that he shall, from time to time, recommend such measures and establishments as may tend to promote these objects." This proposition likewise failed, the Constitution containing no provision in conformity therewith.

Now, as it is utterly impossible that these several propositions, embracing imposts, duties, prohibitions and restraints, and the encouragement of manufactures, could have been disposed of without bringing the whole question of domestic manufactures fully into view—it must follow, that, as no power was given to Congress over *manufactures*, while the power to regulate *commerce* is expressly conferred, it was not the intention of the framers of the Constitution to entrust this power to Congress. Although repeatedy urged to confer such a power, they constantly refused it; and the Constitution, as finally ratified, contains no provision, whatever, upon the subject. In the Report of Luther Martin, a delegate from Maryland, made to the Legislature of his State, an explanation is given of the proceedings of the Convention, in relation to this matter, which removes every shadow of doubt with regard to the true meaning and intent of the framers of the Constitution, in relation to the protection of manufactures. It appears from this statement, that, as the encouragement of manufactures had been refused to be conferred upon the Federal Go-

vernment, it was the desire of Mr. Martin and others, to reserve to the states all the means which they supposed to be necessary for affording effectual encouragement to manufactures within their own limits. Among those it was presumed "that there might be cases in which it would be proper, for the purpose of encouraging manufactures, to lay duties to prohibit the exportation of raw materials, and even in addition to the duties laid by Congress on imports *for the sake of revenue*, to lay a duty to DISCOURAGE THE IMPORTATION OF PARTICULAR ARTICLES into a State, or to enable the manufacturer here to supply us on as good terms as could be obtained from a foreign market."* Here it will be seen that it is positively stated by Mr. Martin that the power given to Congress, to *impose duties upon imports*, was given expressly "*for the sake of revenue*," and was not considered as extending to any duty "to discourage the importation of particular articles, for the purpose of encouraging manufactures," and that it was considered that unless the several states should possess this power as well as that of prohibiting the exportation of certain raw materials, they would not be enabled to extend that complete protection to their own manufactures which might be deemed indispensable to their success. "The most, however," says Mr. Martin, "which we could obtain was, that this power might be exercised by the states, by and with the consent of Congress, and subject to its controul." Thus, then, it manifestly appears, that in relation to manufactures, the framers of the Constitution positively refused to confer upon the Federal Government any power whatever—that the power to lay duties, &c. was conferred for the sake of revenue alone, and was not intended to embrace the power to lay duties "to discourage the importation of particular articles to enable the manufacturers here to supply us on as good terms as could be obtained from a foreign market;" and finally, that the whole subject was left in the hands of the several states, with the restriction, "that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing their inspection laws." This power, it appears, was expressly inserted for the purpose of enabling the states to protect their own manufactures, and this, it seems, was the only provision which the friends of domestic industry could obtain. It is vain to allege that the powers retained by the states on this subject, are inadequate to the effectual accomplishment of the object. If this were so it would only show the necessity of some further provision on this subject—but surely it will not be pretended that it would justify the usurpation by Congress, of a power not only not granted by the Constitution, but purposely withheld.

We think, however, that this exposition of the Constitution places the protection of manufactures on the true foundation on which it should stand in such a Government as ours. Nothing can be more monstrous than that the industry of one or more States in this confederacy, should be made profitable at the expense of others; and this must be the inevitable result of any scheme of legislation by the General Government, calculated to promote Manufactures by restrictions upon Commerce or Agriculture. But leave Manufactures where Agriculture and other domestic pursuits have been wisely left by the Constitution—with the several States—and ample security is furnished that no preference will be given to one pursuit over another: and if it should be deemed advisable in any particular State, to extend encouragement to manufactures, either

* Yates' Secret Debates in the Convention, p. 71.

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by direct appropriations of money, or in the way pointed out in the Article of the Constitution above quoted, that this will be done not at the expense of the rest of the Union, but of the particular State, whose citizens are to derive the advantages of those pursuits. Should Massachusetts, for instance, find it to her advantage to engage in the manufacture of Woollens or Cottons, or Pennsylvania be desirous of encouraging the working of her Iron Mines, let those States grant bounties out of their own Treasuries, to the persons engaged in these pursuits; and should it be deemed advisable to encourage their manufactures by duties, "discouraging the importation of similar articles," in these respective states, let them make an application to Congress, whose consent would doubtless be readily given to any acts of those States, having these objects in view. The Manufactures of Massachusetts and Pennsylvania would thus be encouraged at the expense of the people of those States respectively. But when they claim to do more than this, to encourage their industry at the expense of the industry of the people of the other States; to promote the *Manufactures of the North*, at the expense of the *Agriculture of the South*, by *restrictions upon Commerce*,—in a word, to secure a monopoly for their manufactures, not only in *their own market*, but throughout the United States, then we say, that the claim is unjust, and cannot be granted consistently with the principles of the Constitution, or the great ends of a *Confederated Government*. We shall not stop to enquire whether, as has been urged with great force, that provision of the Constitution which confers the power upon Congress "to promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries," does not, by a necessary implication, deny to Congress the power of promoting the useful arts (which include both agriculture and manufactures) by any other means than those here specified. It is sufficient for our purpose to shew that the power of promoting manufactures, as a distinct substantive object of legislation, has no where been granted to Congress. As to the incidental protection that may be derived from the rightful exercise of the power, either of regulating commerce, or of imposing taxes, duties and imposts, for the legitimate purposes of government—this certainly may be as freely enjoyed by manufactures as it must be by every other branch of domestic industry. But as the power to regulate commerce, conferred expressly for its security, cannot be fairly exerted for its destruction, so neither can it be perverted to the purpose of building up manufacturing establishments—an object entirely beyond the jurisdiction of the Federal Government—So also, the power to levy taxes, duties, imposts and excises, expressly given for the purpose of raising *revenue*, cannot be used for the discouragement of importations, for the purpose of promoting manufactures, without a gross and palpable violation of the plain meaning and intent of the federal compact. Acts may be passed on these subjects falsely purporting, on their face, to have been enacted for the purposes of raising revenue and regulating commerce,—but if in truth they are designed (as the acts of 1824, 1828, and 1832, *confessedly* and avowedly have been) for an entirely different purpose, viz. for the encouragement and promotion of Manufactures—the violation of the Constitution is not less gross, deliberate and palpable, because it assumes the most dangerous of all forms, *a violation by perversion*, the use of a power granted for one purpose, for another and a different purpose, in relation to which Congress has no power to act at all. On the whole, even from the very brief and imperfect view which we have here taken of

this subject, we think we have demonstrated that the protecting system is as GROSS AND PALPABLE a VIOLATION of the CONSTITUTION, according to its true spirit, intent and meaning, as it is unquestionably UNEQUAL, OPPRESSIVE and UNJUST in its bearing upon the great interests of the country, and the several sections of the Union.

But great as are the evils of the American System, fatal as it assuredly must be to the prosperity of a large portion of the Union, and gross as is the violation of the letter and spirit of the Constitution which it perpetrates, the consequences which must inevitably result from the establishment of the pernicious principles on which it is founded, are evils of still greater magnitude. An entire change in the character of the Government is the natural and necessary consequence of the application to the Constitution of those latitudinous rules of construction, from which this system derives its existence, and which must "consolidate the States by degrees into one sovereignty; the obvious tendency and inevitable result of which would be to transform the present Representative system of the United States into a Monarchy."*

We fearlessly appeal to all considerate men, whether it be in the nature of things possible to hold together such a confederacy as ours, by any means short of military despotism, after it has degenerated into a CONSOLIDATED GOVERNMENT—that is to say, after it shall come to be its established policy to exercise a *general legislative controul* over the interests and pursuits of the whole American People.

Can any man be so infatuated as to believe that Congress could regulate wisely the whole labor and capital of this vast Confederacy?—Would it not be a burden too grievous to be borne, that a great central Government, necessarily ignorant of the condition of the remote parts of the country, and regardless, perhaps, of their prosperity, should undertake to interfere with their domestic pursuits, to controul their labor, to regulate their property, and to treat them, in all respects, as DEPENDENT COLONIES, governed not with reference to their own interests, but the interests of others? If such a state of things must be admitted to be altogether intolerable, we confidently appeal to the sober judgment and patriotic feelings of every man who values our free institutions, and desires to preserve them—whether the progress of the Government towards this result, has not, of late years, been rapid and alarming? And whether, if the downward course of our affairs cannot be at once arrested—the consumation of this system is not at hand? No sooner had Congress assumed the power of building up manufactures, by successive tariffs—calculated and intended to drive men from agriculture and commerce, into more favored pursuits—than internal improvements sprung at once into vigorous existence. *Pensions* have been enlarged to an extent not only before unknown in any civilized country, but they have been established on such principles as manifest the settled purpose of bestowing the public treasure, in gratuities, to particular classes of persons and particular sections of country. *Roads* and *Canals* have been commenced, and surveys made in certain quarters of the Union, on a scale of magnificence, which evinces a like determination to distribute the public wealth into new and favored channels; and it is in entire accordance, both with the theory and practice of this new system, that the General Government should absorb all the authority of the States, and

* Madison's Report.

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eventually become the grand depository of the powers, and the general guardian and distributor, of the wealth of the whole Union. It is known to all who have marked the course of our national affairs, that Congress has undertaken to create a BANK, and has already assumed jurisdiction over *science* and the *arts*, over *education* and *charities*, over *roads* and *canals*, and almost every other subject, formerly considered as appertaining exclusively to the States, and that they claim and exercise an *unlimited controul* over the appropriation of the *public lands*, as well as of the *public money*. On looking, indeed, to the legislation of the last ten years, it is impossible to resist the conviction that a fatal change has taken place in the whole policy and entire operation of the Federal Government; that in every one of its departments, it is both in theory and practice rapidly verging towards Consolidation—asserting judicial supremacy over the sovereign States, extending EXECUTIVE PATRONAGE and influence to the remotest ramifications of society, and assuming legislative controul over every object of local concernment; thereby reducing the States to petty corporations, shorn of their sovereignty, mere parts of one great whole, standing in the same relation to the Union, as a county or parish to the State of which it is a subordinate part.

Such is the true character, and such the inevitable tendencies of the AMERICAN SYSTEM. And when the case, thus plainly stated, is brought home to the bosoms of patriotic men, surely it is not possible to avoid the conclusion, that a political system founded on such principles must bear within it the seeds of premature dissolution—and that, though it may for a season be extended, enlarged and strengthened, through the corrupting influence of patronage and power, until it shall have embraced in its serpent folds all the great interests of the State; still the time must come when the people, deprived of all other means of escape, will rise up in their might, and release themselves from this thraldom, by one of those violent convulsions whereby society is uprooted from its foundations, and the edict of REFORM is written in BLOOD.

Against this system South Carolina has remonstrated in the most earnest terms. As early as 1820, there was hardly a district or parish in the whole State from which memorials were not forwarded to Congress, the general language of which was that the protecting system was "utterly subversive of their rights and interests." Again, in 1823 and 1827, the people rose up, almost as one man, and declared to Congress and the world, "that the protecting system was unconstitutional, oppressive and unjust." But these repeated remonstrances were answered only by repeated injuries and insults—by the enacting of the Tariffs of 1824 and 1828. To give greater dignity, and if possible more effect, to these appeals, the Legislature, in December, 1825, solemnly declared, "that it was an unconstitutional exercise of power on the part of Congress, to lay duties to protect domestic manufactures"—and in 1828, they caused to be presented to the Senate of the United States, and claimed to have recorded on its Journals, the solemn PROTEST of the State of South Carolina, denouncing this system as "*utterly unconstitutional, grossly unequal and oppressive, and such an abuse of power as was incompatible with the principles of a free government and the great ends of civil society*," and that they were "*then* only restrained from the assertion of the sovereign rights of the State, by the hope that the magnanimity and justice of the good people of the Union would effect an abandonment of a system partial in its nature, unjust in its operation, and not within the powers delegated to Congress." And, finally, in December, 1830, it was resolved, "That the several acts of Congress, imposing duties on imports, for the protec-

tion of domestic manufactures, are highly dangerous and oppressive violations of the Constitutional compact; and that whenever the States which are suffering under the oppression, shall lose all reasonable hope of redress, from the wisdom and justice of the Federal Government, it will be their right and duty to interpose, in their sovereign capacity, for the purpose of arresting the progress of the evil occasioned by the said unconstitutional acts."

Nor has South Carolina stood alone in the expression of these sentiments: Georgia and Virginia, Alabama and Mississippi, and North Carolina, have raised their voices in earnest remonstrances and repeated warnings. Virginia, in 1829, in responding to South Carolina, declared "that the Constitution of the United States, being a federative compact between sovereign States, in construing which no common arbiter is known, each State has a right to construe the compact for itself; and that Virginia, as one of the high contracting parties, feels itself bound to declare, and does hereby most solemnly declare, its deliberate conviction, that the acts of Congress usually denominated the Tariff Laws, passed avowedly for the protection of domestic manufactures, are not authorized by the plain construction, true intent and meaning of the Constitution."

Georgia, through her Legislature, pronounced this system to be one "which was grinding down the resources of one class of the States to build up and advance the prosperity of another of the same confederacy —and which they solemnly believed to be contrary to the letter and spirit of the Federal Constitution," and declared it to be the right of the several States, in case of any infraction of the general compact, "to complain, remonstrate, and even *refuse obedience* to any measure of the General Government, manifestly against, and in violation of the Constitution; that otherwise the law might be violated with impunity, and without redress, as often as the majority might think proper to transcend their powers, and the party injured would be bound to yield an implicit obedience to the measure, however unconstitutional; which must tend to annihilate all sovereignty and independence of the States, and consolidate all powes in the General Government, which never was designed nor intended by the framers of the Constitution."

Alabama also protested against "the attempt to exclude the foreign in favor of the domestic fabrics, as the exercise of a power not granted by the Constitution," and concluded by stating, "that she wished it to be distinctly understood, that in common with the other Southern and South-Western States, she regards the power asserted by the General Government to controul her *internal concerns* by protecting duties, as a *palpable usurpation* of powers, not given by the Constitution, and a species of oppression, little short of legalized pillage."

North Carolina, in the same spirit, declared, that while "it was conceded that Congress have the express power to lay imposts, she maintains that the power was given for the purpose of *Revenue*, and Revenue alone; and that every other use of the power is an usurpation on the part of Congress." And finally the legislature of Mississippi, "Resolved, that the State of Mississippi concurs with the States of Georgia, South Carolina and Virginia, in their different resolutions upon the subject of *the Tariff*, Colonization Society, and Internal Improvements."

It has been in the face of all these remonstrances and protests, and in defiance of these repeated warnings and solemn declarations, that the recent modification of the Tariff, by the Act of 1832, was effected. The period of the final extinction of the public debt had always been looked

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to as the crisis of our fate, when the policy of the country, in reference to the Protective System, was to be finally settled. It was the period assigned by common consent, as the utmost limit of the forbearance of South Carolina, whose citizens felt that in the adoption of that system, their Constitutional Rights had been trampled on, and their dearest interests cruelly sacrificed.

No one could fail to perceive, that when every pretext for the continuance of the high duties, under which the Southern States had suffered for so many years, was taken away by the payment of the National Debt, and the consequent relief of the Treasury from an annual demand of twelve millions of dollars, that no reason could be given why these duties should not be brought down to the revenue standard, except that it was deliberately designed to secure to the manufacturers, forever, the monopoly they had so long enjoyed, at the expense of the other great interests of the country.

We find accordingly, that the new Tariff, which is intended to take effect only after the final extinguishment of the Public Debt, has been arranged and adjusted with a single eye to the perpetuation of this System, and with an entire disregard of the just claims of the Plantation States. Whatever may be the amount of the aggregate reduction effected by this bill, (and it is not pretended in the *latest* Treasury estimate, to exceed $5,000,000, of which near $4,000,000 are on the unprotected articles,) it is not denied that it will leave a surplus of many millions in the Treasury, beyond the usual expenses or necessary wants of the government; and it is notorious—nay, it appears on the face of the Bill itself, that while duties to the amount of 40—50 and even 100 per cent, are still to be levied upon the protected articles, (that is to say, upon all the Cottons, Woollens, and Iron, the Sugar and the Salt, and other articles embraced in the Protecting System,) the duties on the unprotected articles have been reduced greatly below the revenue standard, and upwards of $3,000,000 entirely repealed; so that according to this system, as now established, a large surplus revenue, to be applied to Internal Improvements, and other unwarrantable purposes, is to be levied by the imposition of enormous Taxes on the necessaries of life—the very articles received chiefly in exchange for Southern productions; and this has been done in order to protect the industry of the North, with which ours comes into competition, while the articles of luxury universally acknowledged to be the fittest subjects for Taxation, are to be admitted, duty free.*

Now, let it be remembered, that the very point in controversy, has all along been, not the *Revenue* but the protecting duties, and yet we see that in answer to all our petitions and remonstrances, Congress has been graciously pleased to make an adjustment of the Tariff, which simply consists in taking off the duties imposed for Revenue, while the protecting duties are allowed to remain substantially untouched. It was not so much the amount of the imposition, as the inequality and injustice of the Protecting System, that has roused the people of South Carolina to determined resistance; and yet we find that this inequality has been aggravated, and that injustice perpetuated, by the deliberate adoption of a measure which was calculated and intended to rivet this system upon us, beyond all hope of relief.

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* See Treasury Estimate, published in August last, shewing an aggregate reduction of $5,187,078, of which $3,108,631 were made ENTIRELY FREE.

The grave and solemn question now occurs, what is to be done to redeem ourselves from the state of colonial vassalage into which we have unhappily fallen? Shall we still continue to wait for a returning sense of justice on the part of our oppressors? We are thoroughly persuaded that the hope can no longer be indulged, that the tariff majority in Congress will, of their own accord, relieve us from this cruel bondage—experience teaches us that this expectation, so long and fondly indulged, is utterly delusive. The only effect of further delay must be to strengthen the hand of the oppressor—to crush the public spirit—deaden the sensibility of the people to the inestimable value of their rights—and teach them the degrading lesson of wearing their chains in patience. It is almost inconceivable that any reflecting man can believe that the crisis in our affairs, arising from the final extinction of the public debt, should be suffered to pass away, without reducing the tariff to the revenue standard, and yet that such reduction may be expected to take place at some future period. What period so auspicious as that which has been allowed to pass away unimproved? Is any one so ignorant of human nature, as not to know that the annual surplus, which then will be brought into the Treasury, under the act of 1832, will be speedily absorbed by new and enlarged appropriations, serving as additional props to a system, which some vainly imagine to be tottering on its base, ready to fall under its own weight? Even at the last session of Congress, the annual appropriations were enlarged by several millions of dollars, in anticipation of this expected surplus, and the foundation is already laid for its absorption; and when this shall be accomplished, where will be the hopes of those who now say that the evil is to correct itself, and who tell us that the act of 1832, which was in fact designed to rivet the system upon the country forever—and was hailed by its friends as "a clear, distinct, and indisputable admission of the principle of protection," is to be viewed as a blessed reform presenting the brightest auspices for the future? The truth unquestionably is, that the American System is from its very nature progressive. When its foundations were laid, it was foreseen and predicted that the great interests which it would build up, would exert a controuling influence over the legislation of the country. The history of the world, indeed, affords no example of a voluntary relinquishment, by a favored class, of any pecuniary or political advantage, secured to them by the laws and general policy of the country. Force has often torn from the hands of the oppressor, his unrighteous gains, but reason and argument are as vain, in convincing the understanding, as appeals to justice and magnanimity have ever proved to be impotent in softening the hearts of those who are enriched under the operation of laws passed professedly for the public good. Who is there, that can for one moment believe that any thing short of a direct appeal to their interests, will induce the dependants upon the Federal Government, the wealthy sugar planters, and iron masters, or the joint stock companies, who have millions invested in cotton and woollen factories, yielding, under the operation of the Protecting System, an annual income of 10 or 20 per cent, voluntarily to relinquish the advantage secured to them by the laws, and consent to come down to a level with the other classes of the community! It is impossible. From every view, then, which your committee have been able to take of this subject, they are constrained to announce to this Convention, the solemn truth, that after more than 10 years of patient endurance of a system, which is believed by the people of this State to be *fatal to their prosperity*, and a *gross, deliberate*, and *palpable violation of their Constitutional rights*—after the most earnest and unavailing appeals

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to that sense of justice, and those common sympathies, which ought to bind together the different members of a confederated republic, the crisis has at length arrived, when the question must be solemnly and finally determined, whether there remain any means, within the power of the State, by which these evils may be redressed.

It is useless to disguise the fact, or to attempt to delude ourselves on this subject. *The time has come* when the State must either adopt a *decisive course of action*, or we must at once *abandon the contest*. We cannot again petition. It would be idle to remonstrate, and degrading to protest. In our estimation, it is now a question of *Liberty* or *Slavery!* It is now to be decided, whether we shall maintain the rights purchased by the precious blood of our fathers, and transmit them unimpaired to our posterity, or tamely surrender them without a struggle. We are constrained to express our solemn conviction, that under the Protecting System, we have been reduced to a state of "colonial dependence, suffering and disgrace;" and that unless we now fly with the spirit which becomes freemen, to the rescue of our liberties, they are lost forever. Brought up in an ardent devotion to the union of the States, the people of South Carolina have long struggled against the conviction, that the powers of the Federal Government have been shamefully perverted to the purposes of injustice and oppression. Bound to their brethren by the proud recollections of the past, and fond hopes of the future, by common struggles for liberty and common glories acquired in its defence, they have been brought slowly, and with the utmost reluctance, to the conclusion, that they are shut out from their syspathies, and made the unpitied victims of an inexorable system of tyranny, which is without example in any country claiming to be free. Experience has at length taught us the lamentable truth, that administered as the government now is, and has been for several years past, in open disregard of all the limitations prescribed by the Constitution, the Union itself, instead of being a blessing, must soon become a curse. Liberty, we are thoroughly persuaded, cannot be preserved under our system, without a sacred and inviolable regard, not merely to the letter, but to the true spirit of the Constitution; and without liberty, the Union would not be worth preserving. If then there were no alternatives but to submit to these evils, or to seek a remedy even in Revolution itself, we could not, without proving ourselves recreant to the principles hallowed by the example of our ancestors, hesitate a moment as to our choice. We should say, in the spirit of our fathers, "we have counted the cost, and find nothing so intolerable as voluntary slavery." But we cannot bring ourselves for one moment to believe that the alternatives presented to us, are revolution or slavery. We confidently believe that there is a redeeming spirit in our institutions, which may, on great occasions, be brought to our aid, for the purpose of preserving the public liberty—restoring the Constitution—and effecting a regeneration of the government, and thereby producing a redress of intolerable grievances, without war, revolution, or a dissolution of the Union. These great objects, we feel assured, may now be effected, unless those who are in possession of the powers of the government, and charged with the administration of our national affairs, shall resolve to persevere in a course of injustice, and prove, by their conduct, that they love the usurpation (to which the people of this State are unalterably determined not to submit) better than the Union. We believe that the redeeming spirit of our system is STATE SOVEREIGNTY, and that it results from the very form and structure of the Federal Government—that when the rights reserved to the several states are deliberately invaded, it is their right and their duty

to "interpose for the purpose of arresting the progress of the evil of usurpation, and to maintain, within their respective limits, the authorities and privileges belonging to them as independendent sovereignties."* If the several states do not possess this right, it is in vain that they claim to be sovereign. They are at once reduced to the degrading condition of humble dependents on the will of the Federal Government. South Carolina claims to be a sovereign State. She recognizes no tribunal upon earth as above her authority. It is true, she has entered into a solemn compact of Union with other sovereign states—but she claims, and will exercise, the right to determine the extent of her obligations under that compact, nor will she consent that any other power shall exercise the right of judging for her. And when that compact is violated by her co-states, or by the Government which they have created, she asserts her unquestionable right "*to judge of the infractions*, as well as of the MODE and MEASURE OF REDRESS."† South Carolina claims no right to judge for others. The states, who are parties to the compact, must judge, each for itself, whether that compact has been pursued or violated; and should they differ irreconcilably in opinion, there is no earthly tribunal that can authoritatively decide between them. It was in the contemplation of a similar case, that Mr. Jefferson declared that if the difference could neither be compromised nor avoided, it was the peculiar felicity of our system to have provided a remedy in a Convention of all the states, by whom the Constitution might be so altered or amended, as to remove the difficulty. To this tribunal, South Carolina is willing that an appeal should now be made, and that the constitutional compact should be so modified as to accomplish all the great ends for which the Union was formed, and the Federal Government constituted, and at the same time restore the rights of the states, and preserve them from violation hereafter.

Your Committee purposely avoid entering here into an examination of the nature and character of this claim, which South Carolina asserts to interpose her sovereignty, for the protection of her citizens from the operation of unconstitutional laws, and the preservation of her own reserved rights. In an address, which will be submitted to the Convention, this subject will be fully examined, and they trust that it will be made to appear, to the entire satisfaction of every dispassionate mind, that in adopting the ORDINANCE, which the committee herewith report, declaring the Tariff Laws, passed for the protection of domestic manufactures, null and void, and no law—and directing the Legislature to provide that the same shall not be enforced within the limits of this State—South Carolina will be asserting her unquestionable rights, and in no way violating her obligations under the federal compact.

The Committee cannot dismiss this point, however, even for the present, without remarking that in asserting the principles, and adopting the course, which they are about to recommend, South Carolina will only be carrying out the doctrines which were asserted by Virginia and Kentucky in 1798, and which have been sanctioned by the high authority of Thomas Jefferson. It is from the pen of this great apostle of liberty, that we have been instructed that to the Constitutional compact, "each State acceded as a State, and is an integral party; its co-states, forming as to itself the other party;" that "they alone being parties to the com-

* Virginia Resolutions of '98.
† Kentucky Resolutions of '98.

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pact, are solely authorized to judge, in the last resort, of the powers exercised under it—Congress being not a party, but merely the creature of the compact;" that it becomes a sovereign State, "to submit to undelegated, and consequently unlimited power, in no man or body of men on earth—that in cases of abuse of *delegated powers*, the members of the General Government being chosen by the people, a change by the people would be the Constitutional remedy; but where powers are assumed which have not been delegated [the very case now before us] A NULLIFICATION OF THE ACT IS THE RIGHTFUL REMEDY—that every State has a natural right, in cases not within the compact [*casus non fœderis*] to NULLIFY, of their own authority, all assumptions of powers by others within their limits; and that without this right, they would be under the dominion, absolute and unlimited, of whomsoever might exercise the right of judgment for them;" and that in case of acts being passed by Congress, "so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the General Government, but that it will proceed to exercise over the states all powers whatsoever, by seizing the rights of the states, and consolidating them in the hands of the General Government, with a power assumed of binding the states, not merely in cases made federal, but in all cases whatsoever, by laws made, not with their consent, but by others against their consent, it would be the duty of the states to declare the acts void and of no force; and that *each should take measures of its own* for providing that neither such acts, nor any other of the General Government, not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories."

In acting on these great and essential truths, South Carolina surely cannot err. She is convinced, and has so declared to Congress and the World, that the Protecting System is in all its branches a "gross, deliberate, and palpable violation of the Constitution." She believes that after having exhausted every other means of redress in vain, it is her right, and that it has now become her solemn duty, to interpose for arresting the evil within her own limits, by declaring said acts "to be null and void, and no law, and taking measures of her own that they shall not be enforced within her territory." That duty she means to perform, and to leave the consequences in the hands of *Him*, with whom are the issues of life and the destinies of nations.

South Carolina will continue to cherish a sincere attachment to the UNION of the states, and will to the utmost of her power endeavor to preserve it; "and believes that for this end, it is her duty to watch over and oppose any infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence." She venerates the CONSTITUTION, and will protect and defend it "against every aggression, either foreign or domestic:" but above all, she estimates, as beyond all price, her LIBERTY, which she is unalterably determined never to surrender, while she has the power to maintain it. Influenced by these views, your committee report herewith, for the adoption of the Convention, a solemn DECLARATION and ORDINANCE.

AN ORDINANCE,

To Nullify certain Acts of the Congress of the United States, Purporting to be Laws, laying Duties and Imposts on the Importation of Foreign Commodities.

Whereas, the Congress of the United States, by various acts, purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures, and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the Constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the Constitution, which provides for equality in imposing the burdens of taxation upon the several States and portions of the Confederacy. *And whereas*, the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing the specific objects and purposes which the Constitution of the United States authorizes it to effect and accomplish, hath raised and collected unnecessary revenue, for objects unauthorized by the Constitution—

We, therefore, the People of the State of South Carolina, in Convention assembled, do Declare and Ordain, and it is hereby Declared and Ordained, That the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States, and more especially an act entitled "an act in alteration of the several acts imposing duties on imports," approved on the nineteenth day of May, one thousand eight hundred and twenty-eight, and also, an act entitled "an act to alter and amend the several acts imposing duties on imports," approved on the fourteenth day of July, one thousand eight hundred and thirty-two, are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null, void, and no law, nor binding upon this State, its officers, or citizens; and all promises, contracts and obligations, made or entered into, or to be made or entered into, with purpose to se-

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cure the duties imposed by said acts, and all judicial proceedings which shall be hereafter had in affirmance thereof, are, and shall be held, utterly null and void.

And it is further Ordained, That it shall not be lawful for any of the constituted authorities, whether of this State, or of the United States, to enforce the payment of duties imposed by the said acts, within the limits of this State; but it shall be the duty of the Legislature to adopt such measures and pass such acts as may be necessary to give full effect to this Ordinance, and to prevent the enforcement and arrest the operation of the said acts and parts of acts of the Congress of the United States, within the limits of this State, from and after the first day of February next; and the duty of all other constituted authorities, and of all persons residing or being within the limits of this State, and they are hereby required and enjoined, to obey and give effect to this Ordinance, and such acts and measures of the Legislature as may be passed or adopted in obedience thereto.

And it is further Ordained, That in no case of law or equity, decided in the Courts of this State, wherein shall be drawn in question the authority of this Ordinance, or the validity of such act or acts of the Legislature as may be passed for the purpose of giving effect thereto, or the validity of the aforesaid acts of Congress, imposing duties, shall any appeal be taken or allowed to the Supreme Court of the United States; nor shall any copy of the record be permitted or allowed for that purpose; and if any such appeal shall be attempted to be taken, the Courts of this State shall proceed to execute and enforce their judgments, according to the laws and usages of the State, without reference to such attempted appeal, and the person or persons attempting to take such appeal may be dealt with as for a contempt of the Court.

And it is further Ordained, That all persons now holding any office of honor, profit or trust, civil or military, under this State, (members of the Legislature excepted) shall, within such time, and in such manner as the Legislature shall prescribe, take an oath, well and truly to obey, execute and enforce this Ordinance, and such act or acts of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same; and on the neglect or omission of any such person or persons so to do, his or their office or offices shall be forthwith vacated, and shall be filled up as if such person or persons were dead or had resigned; and no person hereafter elected to any office of honor, profit or trust, civil or military, (members of the Legislature excepted) shall, until the Legislature shall otherwise provide and direct, enter on the execution of his office, or be in any respect competent to discharge the duties thereof, until he shall, in like manner, have taken a similar oath; and no juror shall be impannelled in any of the Courts of this State, in any cause in which shall be in question this Ordinance, or any act of the Legislature passed in pursuance thereof, unless he shall first, in addition to the usual oath, have taken an oath that he will well and truly obey, exe-

cute, and enforce this Ordinance, and such act or acts of the Legislature as may be passed to carry the same into operation and effect, according to the true intent and meaning thereof.

And we, the People of South Carolina, to the end that it may be fully understood by the Government of the United States, and the People of the co-States, that we are determined to maintain this, our Ordinance and Declaration, at every hazard, *Do further Declare*, that we will not submit to the application of force, on the part of the Federal Government, to reduce this State to obedience; but that we will consider the passage, by Congress, of any act authorizing the employment of a military or naval force against the State of South Carolina, her constituted authorities or citizens, or any act abolishing or closing the ports of this State, or any of them, or otherwise obstructing the free ingress and egress of vessels to and from the said ports, or any other act, on the part of the Federal Government, to coerce the State, shut up her ports, destroy or harrass her commerce, or to enforce the acts hereby declared to be null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union: and that the People of this State will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connexion with the people of the other States, and will forthwith proceed to organize a separate Government, and to do all other acts and things which sovereign and independent States may of right do.

Done in Convention, at Columbia, the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of the Declaration of the Independence of the United States of America.

JAMES HAMILTON, JR. *President of the Convention, and Delegate from St. Peter's.*

JAMES HAMILTOM, Sr.	THOMAS W. BOONE
RICHARD BOHUN BAKER, Sr.	R. W. BARNWELL
SAMUEL WARREN	ISAAC BRADWELL, Jr.
NATHANIEL HEYWARD	THOMAS G. BLEWETT
ROBERT LONG	P. M. BUTLER
J. B. EARLE	JOHN G. BROWN
L. M. AYER	J. G. BROWN
BENJAMIN ADAMS	JOHN BAUSKETT
JAMES ADAMS	A. BURT
JAMES ANDERSON	FRANCIS BURT, Jr.
ROBERT ANDERSON	BAILEY BARTON
WILLIAM ARNOLD	A. BOWIE
JOHN BALL	JAMES A. BLACK
BARNARD E. BEE	A. H. BELIN

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PHILLIP COHEN
SAMUEL CORDES
THOMAS H. COLCOCK
C. J. COLCOCK
CHARLES G. CAPERS
WILLIAM C. CLIFTON
WEST CAUGHMAN
JOHN COUNTS
BENJAMIN CHAMBERS
I. A. CAMPBELL
WILLIAM DUBOSE
JOHN H. DAWSON
JOHN DOUGLAS
GEORGE DOUGLAS
F. H. ELMORE
WILLIAM EVANS
EDMUND J. FELDER
A. FULLER
THEODORE L. GOURDIN
PETER G. GOURDIN
T. J. GOODWYN
PETER GAILLARD, Jr.
JOHN K. GRIFFIN
GEORGE W. GLENN
ALEX. L. GREGG
ROBERT Y. HAYNE
WILLIAM HARPER
THOMAS HARRISON
JOHN HATTON
THOMAS HARLLEE
AMB. HUGUENIN
JACOB BOND I'ON
JOHN S. JETER
JOB JOHNSTON
JOHN S. JAMES
M. JACOBS
J. A. KEITH
JOHN KEY
JACOB H. KING
STEPHEN LACOSTE
JAMES LYNAH
FRANCIS Y. LEGARE
ALEX. J. LAWTON
JOHN LIPSCOMB
JOHN LOGAN
J. LITTLEJOHN.
A. LANCASTER
BENJ. A. MARKLEY
JOHN MAGRATH
JOHN S. MANER
W. M. MURRAY
R. G. MILLS
JOHN B. McCALL
D. H. MEANS
R. G. MAYS
GEORGE McDUFFIE
JAMES MOORE
JOHN L. MILLER
STEPHEN D. MILLER
JOHN B. MILLER
R. P. McCORD
JOHN L. NOWELL
JENNINGS O'BANNON
J. WALTER PHILLIPS
CHARLES PARKER
WILLIAM PORCHER
EDWARD G. PALMER
CHARLES C. PINCKNEY
WILLIAM C. PINCKNEY
THOMAS PINCKNEY
FRANCIS D. QUASH
JOHN RIVERS
DONALD ROWE
BENJAMIN ROGERS
THOMAS RAY
JAMES G. SPANN
JAMES SPANN
S. L. SIMONS
PETER J. SHAND
JAMES MONGIN SMITH
G. H. SMITH
WM. SMITH
STEPHEN SMITH
WM. STRINGFELLOW
EDWIN J. SCOTT
F. W. SYMMES
J. S. SIMS
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JOSEPH L. STEPHENS
T. E. SCREVEN
ROBERT J. TURNBULL
ELISHA TYLER

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ISHAM WALKER.
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F. H. WARDLAW
ABNER WHATLEY
J. T. WHITEFIELD
SAMUEL L. WATT
NICHOLAS WARE
WM. WATIES
ARCHIBALD YOUNG
R. BARNWELL SMITH

[ATTEST.]

ISAAC W. HAYNE,
Clerk of the Convention.

ADDRESS,

TO THE PEOPLE OF SOUTH CAROLINA, BY THEIR DELEGATES IN CONVENTION.

FELLOW-CITIZENS:

The situation in which you have been placed by the usurpations of the Federal Government, is one which you so peculiarly feel, as to render all reference to it at this moment unnecessary. For the last ten years the subject of your grievances has been presented to you. This subject you have well considered. You have viewed it in all its aspects, bearings, and tendencies, and you seem more and more confirmed in the opinion, expressed by both branches of the Legislature, that the Tariff, in its operation, is not only "grossly unequal and unjust, but is such an abuse of power as is incompatible with the principles of a Free Government, and the great ends of civil society;" and that, if persisted in, "the fate of this State would be poverty and utter desolation." Correspondent with this conviction, a disposition is manifested in every section of the country, to arrest, by some means or other, the progress of this intolerable evil. This disposition having arisen from no sudden excitement, but having been gradually formed by the free and temperate discussions of the Press, there is no reason to believe that it can ever subside, by any means short of the removal of the urgent abuse; and it is under this general conviction, that we have been convened to take into consideration, not only the character and extent of your grievances, but also the mode and measure of redress.

This duty, Fellow-Citizens, we have discharged to the best of our judgments, and the result of our deliberations will be found in the DECLARATION and ORDINANCE just passed by us—founded on the great and undeniable truth, that in all cases of a palpable, oppressive and dangerous infraction of the Federal compact, each State has a right to annul, and to render inoperative within its limits, all such unauthorized acts. After the luminous expositions which have been already furnished by so many great minds, that the exercise of this right is compatible with the first principles of our anomalous scheme of Government, it would be superfluous here to state at length the reasons by which this mode of redress is sustained. A deference, however, for the opinions of those of our fellow-citizens who have hitherto dissented from us, demands that we should briefly state the principal grounds upon which we place the right and the expediency of Nullification.

The Constitution of the United States, as is admitted by contemporaneous writers, is a compact between Sovereign States. Though the subject matter of that compact, was a government, the powers of which *Government* were to operate to a *certain extent* upon the people of those Sovereign States, *aggregately*, and not upon the State Authorities, as is

usual in Confederacies, still the Constitution is a Confederacy. First—It is a Confederacy, because, in its *foundations*, it possesses not one single feature of *nationality*. The people of the separate States, as distinct political communities, *ratified* the Constitution, each State acting for itself, and binding its own citizens, and not those of any other State. The act of ratification declares it "to be binding on the *States*, so ratifying." The *States* are its authors—*their* power created it—*their* voice clothed it with authority—the Government it formed, is, in reality, *their* Government, and the Union of which it is the bond, is a Union of *States*, and not of individuals. Secondly—It is a Confederacy, because the *extent* of the powers of the Government depends, not upon the people of the United States *collectively*, but upon the State Legislatures, or on the people of the separate States, acting in their State Conventions, each State being represented by a single vote.

It must never be forgotten, that it is to the *creating* and to the *controuling* power, that we are to look for the true character of the Federal Government; for the present controversy is, not as to the SOURCES from which the ordinary powers of the Government are drawn; these are partly *federal*, and partly *national*. Nor is it relevant, to consider upon *whom* these powers operate. In this last view, the Government for *limited* purposes is entirely national. The true question is, who are the parties to the compact? Who created, and who can alter and destroy it? Is it the *States* or the *People?* This question has been already answered. The States, as *States*, ratified the compact. The people of the United States, collectively, had no agency in its formation. There did not exist then, nor has there existed at any time since, such a political body as the people of the United States. There is not now, nor has there ever been such a relation existing, as that of a cititizen of New-Hampshire, and a citizen of South Carolina, bound together in the same *social* compact. It would be a waste of time to dwell longer on this part of our subject. We repeat, that as regards the FOUNDATION, and the EXTENT of its powers, the Government of the United States is strictly what its name implies, a FEDERAL Government—a league between several Sovereigns; and in these views, a more perfect Confederacy has never existed in ancient or modern times.

Or looking into this Constitution, we find that the most important sovereign powers are delegated to the central Government: and all other powers are reserved to the States. A foreign or an inattentive reader, unacquainted with the origin, progress, and history of the Constitution, would be very apt, from the phraseology of the instrument, to regard the States as having divested themselves of their Sovereignty, and to have become great corporations subordinate to one supreme Government. But this is an error. The States are as Sovereign now, as they were prior to their entering into the compact. In common parlance, and to avoid circumlocution, it may be admissible enough to speak of *delegated* and *reserved* Sovereignty. But correctly speaking, Sovereignty is an unit. It is "one, indivisible and unalienable." It is, therefore, an absurdity to imagine that the Sovereignty of the States is surrendered in *part*, and retained in *part*. The Federal Constitution is a treaty, a confederation, an alliance, by which so many Sovereign States agree to exercise their sovereign powers *conjointly* upon certain objects of external concern, in which they are equally interested, such as WAR, PEACE, COMMERCE, Foreign Negociation, and Indian Trade; and upon all other subjects of civil Government, they are to exercise their Sovereignty *separately*. This is the true nature of the compact.

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For the convenient conjoint exercise of the Sovereignty of the States there must, of necessity, be some common agency or functionary. This agency is the Federal Government. It represents the confederated States, and executes their joint will, as expressed in the compact. The powers of this Government are wholly *derivative*. It possesses no more inherent sovereignty than an incorporated town, or any other great corporate body—it is a political corporation, and, like all corporations, it looks for its power to an exterior source. That source is the States. It wants that "irresistable, absolute, uncontrouled authority," without which, according to jurists, there can be no sovereignty. As the States conferred, so the States can take away its powers. All inherent sovereignty is, therefore, in the States. It is the moral obligation alone, which each State has chosen to impose upon herself, and not the want of sovereignty, which restrains her from exercising all those powers which (as we are accustomed to express ourselves) she has surrendered to the Federal Government. The present organization of our Government, as far as regards the *terms* in which the powers of Congress are delegated, in no wise differs from the old Confederation. The powers of the Old Congress were delegated rather in stronger language than we find them written down in the new charter; and yet he would hazard a bold assertion, who would say that the States of the old Confederacy were not as sovereign as Great Britain, France and Russia would be, in an alliance offensive and defensive. It was not the reservation in express terms of the "Sovereignty, Freedom, and Independence of each State" which made them Sovereign. They would have been equally Sovereign, as is universally admitted, without such a reservation.

We have said thus much on the subject of Sovereignty, because the only foundation upon which we can safely erect the right of a State to protect its citizens, is, that South Carolina, by the Declaration of Independence, became, and has since continued, a Free, Sovereign and Independent State; that as a Sovereign State, she has the *inherent* power to do all those acts which, by the law of Nations, any Prince or Potentate may of right do; that, like all independent States, she neither has, nor ought she to suffer, any other restraint upon her sovereign will and pleasure, than those high moral obligations, under which all Princes and States are bound before God and man, to perform their solemn pledges. The inevitable conclusion, from what has been said, therefore, is, that as in all cases of compact between Independent Sovereigns, where, from the very nature of things, there can be no common judge or umpire, each Sovereign has a right "to judge as well of infractions, as of the mode and measure of redress"—so in the present controversy between South Carolina and the Federal Government, it belongs solely to her, by her delegates in solemn Convention assembled, to decide, whether the Federal compact be violated, and what remedy the State ought to pursue. South Carolina, therefore, cannot, and will not yield to any Department of the Federal Government, and still less to the Supreme Court of the United States, the creature of a Government which itself is a creature of the States, a right which enters into the essence of all sovereignty, and without which it would become a bauble and a name.

It is fortunate for the view which we have just taken, that the history of the Constitution, as traced through the Journals of the Convention which framed that instrument, places the right contended for, upon the same sure foundation. Those journals furnish abundant

proof that "no line of jurisdiction between the States and Federal Government, in doubtful cases," could be agreed on. It was conceded by Mr. Madison and Mr. Randolph, the most prominent advocates for a Supreme Government, that it was impossible to draw this line, because no tribunal sufficiently impartial, as they conceived, could be found, and that there was no alternative, but to make the Federal Government Supreme, by giving it, in all such cases, a negative on the acts of the State Legislature. The pertinacity with which this negative power was insisted on by the advocates of a National Government, even after all the important provisions of the *judiciary* or *third article* of the Constitution were arranged or agreed to, proves, beyond doubt, that the Supreme Court was never contemplated by either party in that Convention, as an arbiter, to decide conflicting claims of sovereignty between the States and Congress; and the repeated rejection of all proposals to take from the States the power of placing their own construction upon the articles of Union, evinces that the States were resolved never to part with the right to judge whether the acts of the Federal Legislature were, or were not, an infringement of those articles.

Correspondent with the right of a sovereign State to judge of the infractions of the Federal Compact, is the duty of this Convention to declare the extent of the grievance, and the mode and measure of redress. On both these points, public opinion has already anticipated us, in much that we could urge. It is doubted whether, in any country, any subject has undergone, before the people, a more thorough examination than the Constitutionality of the several acts of Congress for the protection of Domestic Manufactures. Independent of the present embarrassments they throw in the way of our commerce, and the plain indications that certain articles which are the natural exchange for our valuable staple products, are, sooner or later, to be virtually prohibited—independent of the diminution, which these impost duties cause in our incomes, and the severity of the tax upon all articles of consumption needed by the poor, they recognize a principle, not less at war with the ends for which this great confederacy was formed, than it is with that spirit of justice, and those feelings of concord which ought to prevail amongst states united by so many common interests and exalted triumphs. The people surely need not to be told, in this advanced period of intellect and of freedom, that no government can be free, which can rightfully impose a tax, for the encouragement of one branch of industry, at the expense of all others, unless such a tax be justified by some great and unavoidable public necessity. Still less can the people believe, that in a confederacy of states, designed, principally, as an alliance offensive and defensive, its authors could ever have contemplated that the federal head should regulate the domestic industry of a widely extended country, distinguished above all others, for the diversity of interests, pursuits and resources in its various sections. It was this acknowledged diversity, that caused the arrangement of the conjoint and separate exercise of sovereign authority; the one to regulate external concerns, and the other to have absolute controul "over the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the states."

It is the striking characterestic in the operation of a simple and consolidated government, that it protects Manufactures, Agriculture, or any other branch of the public industry—that it can establish corporations, or make Roads and Canals, and patronize learning, and the arts. But it would be difficult to shew that such was the government which the

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sages of the Convention designed for the states. All these powers were proposed to be given to Congress, and they were proposed by that party in the Convention who desired a *firm National Government*. The Convention having decided on the *federal* form, in exclusion of the national, all these propositions were rejected; and yet we have lived to see an American Congress, which can hold no power except by express grant, as fully in the exercise of these powers, as if they were part and parcel of their expressly delegated authority. Under a pretence of regulating Commerce, they would virtually prohibit it. Were this regulation of Commerce resorted to as a means of coercing foreign nations to a fair reciprocity in their intercourse with us, or for some other *bona fide* commercial purpose, as has been justly said by our Legislature, the Tariff acts would be Constitutional. But none of these acts have been passed as countervailing or *retaliatory* measures, for restrictions placed on our Commerce by foreign nations. Whilst other nations feel disposed to relax in their restraints upon trade, our Congress seems absolutely bent upon the interdiction of those articles of merchandize, which are exchangeable for the products of Southern labor; thus causing the principal burthen of taxation to fall upon this portion of the Union, and by depriving us of our accustomed markets, to impoverish our whole Southern country. In the same manner, and under the pretence of promoting the Internal Improvement of the states, and for other equally unjustifiable and unconstitutional purposes, Congress is in the constant habit of violating those fundamental principles of the Constitution, on which alone can rest the prosperity of the states, and the durability of the Union.

It is in vain to imagine, that with a people who have struggled for freedom, and know its inestimable value, such a state of affairs can be endured longer than there is a well founded hope, that reason and justice will resume their empire in the common council of the confederacy. That hope having expired with the last session of Congress, by the present Tariff Act distinctly and fully recognizing, as the permanent policy of the country, the odious principle of protection, it occurs to us that there is but one course for the State to pursue. That course, fellow-citizens, is RESISTANCE. Not *physical*, but MORAL resistance—not resistance in an angry, or irritated feeling, but resistance by such counter-legislation, which, whilst it shall evince to the world that our measures are built upon the necessity of tendering to Congress an amicable issue, to try a doubtful question, between friends and neighbors, shall, at the same time, secure us in the enjoyment of our rights and privileges. It matters not, fellow-citizens, by what name this counter-legislation shall be designated—call it Nullification, State interposition, State veto, or by whatever other name you please, still if it be but resistance to an oppressive measure, it is the course which duty, patriotism, and self-preservation prescribes. If we are asked upon what ground we place the right to resist a particular law of Congress, and yet regard ourselves as a constituent member of the Union, we answer—the ground of the COMPACT. We do not choose, in a case of this kind, to recur to what are called our natural rights, or the right of revolution. We claim to nullify by a more imposing title. We claim it as a CONSTITUTIONAL right; not meaning, as some have imagined, that we *derive* the right from the Constitution, for derivative rights can only belong to the *functionaries* of the high contracting parties to the Constitution, but we claim to exercise it as one of the PARTIES to the compact, and as consistent with its letter, its genius and its spirit—it being distinctly understood at the

time of ratifying the Constitution, that the exercise of all sovereign rights not agreed to be had conjointly, were to be exerted separately by the states. Though it be true, that the provision in favor of what we call the reserved rights of the states, was not necessary to secure to the states such reserved rights, yet the mere circumstance of its insertion in the instrument, makes it as clear a *Constitutional* provision, as that of the power of Congress to raise armies, or to declare war. Any exercise of a right in conformity with a Constitutional provision, we conceive to be a *Constitutional* right, whether it be founded on an express grant of the right, or be included in a general reservation of undefined powers. The Constitution being the supreme law, and instrument in which a distribution of powers is made between the Federal Government and the States, it is incumbent on the authorities of each Government, so to shape their legislation as not to overstep the boundaries assigned to them. No act can therefore be done by either Government, which for its *validity* can be referred to any other test than the STANDARD OF THE CONSTITUTION. If a State Government passess an act, defining and punishing a burglary, or a law abolishing the rights of primogeniture, it is more correct to say, that she is in the exercise of her *Constitutional*, than of her *natural* rights, because it is an express *Constitutional* provision, that she should exercise all her sovereign rights, not already entrusted to the common functionary of the parties. As it is impossible, then, that any act can be passed by either Government, which if disputed, must not be referred to the Constitution as the supreme law of the parties, so a right is constitutional or unconstitutional, as it shall be found to comport with, or to be repugnant to, the terms or the spirit of that instrument. There is not, therefore, a sovereign, or a natural right, which South Carolina can lawfully exercise in conformity with her engagements, which is not stipulated for in the tenth amendment to the Constitution. All such rights stipulated for, must be Constitutional. To regard them otherwise, would be a perversion of terms.

That Nullification under our reserved rights was regarded as Constitutional by the Virginia Resolutions of 1798, is clear from the exposition of them by the celebrated Report, drawn by Mr. Madison. In defending the third of these Resolutions, which asserts the doctrine of State interposition and protection, the Committee say "that they have *scanned* it not merely with a strict, *but with a severe eye;* and they feel confidence in pronouncing, that in its *just and fair construction*, it is unexceptionably *true in its several positions*, as well as CONSTITUTIONAL and conclusive in its *inferences*." What where the positions of the third Resolution? 1st, That the powers of the Federal Government were limited to the plain sense of the instrument constituting the compact. 2d, That in case of a deliberate, palpable and dangerous infraction of the compact, the State has the right to interpose, &c. Now what is the inference? It is that "they are in duty bound to arrest the progress of the evil, by maintaining within their RESPECTIVE limits, the authorities, rights and liberties appertaining to them." This inference, says the Report, is "CONSTITUTIONAL and conclusive." The same doctrine was as distinctly affirmed by the Virginia Assembly, in their Resolutions adopting the Report. They say "that having fully and accurately re-examined and re-considered these Resolutions, they find it to be their indispensable duty to ADHERE *to the same* as founded in truth, as CONSONANT WITH THE CONSTITUTION, and as *conducive to its prescrvation*."

We are aware that it has been recently maintained, that by the State

interposition referred to in this Resolution, the Virginia Assembly had allusion to the natural right; and Mr. Madison himself has been brought forward to give a construction to this Resolution contrary to the most obvious import of the terms. Be it so. Then, if the State interposition here spoken of, be a natural right, it is a right which the Virginia Assembly have pronounced "CONSONANT with the Constitution, and as conducive to its preservation." Or, in other words, that without the exercise of this natural sovereign right of interposition, the Constitution cannot be preserved. There is no incongruity in this. It is quite competent for two monarchs to stipulate in a treaty for that right, which, independent of that treaty, would be a natural right; as if a power were conferred by the treaty, on the citizens of either Prince, to capture, adjudge and execute all subjects of the other, engaged in piracy on the high seas. It certainly would be more proper to call such a right, a *Conventional* right, than a natural right, though it be both. Several of the State Constitutions furnish instances of natural rights being secured by a Constitutional provision. Even in the instrument we are now considering, there is a distinct affirmation, in terms, of a natural right of sovereignty: such as the sovereign right of a State to keep troops and ships of war in a certain emergency, or the sovereign right of a State to lay import and export duties, for the purpose of executing its inspection laws. In these cases, a natural right is also a constitutional right, contrary to the definition of those who maintain that no right is properly constitutional which is a sovereign right—because constitutional rights are derivative rights, exercised by functionaries. That reasoning would be indeed strange, which would place a natural reserved sovereign right, expressed in terms, upon a better footing than all that mass of residuary power included in the general reservation of the tenth amendment. It would be to create a distinction without a difference. The reserved rights, though undefined, are easily ascertained. Any particular right, not found in the enumerated powers of Congresss, of course belongs to the states.

The right to nullify, is universally admitted to be a natural sovereign right. The natural rights of the states are also admitted to be their reserved rights. If they are reserved, they must be constitutional, because the Constitution being an agreement to arrange the mode by which the states shall exercise their sovereignty, expressly stipulates for the exercise of these powers in all cases not enumerated. To some it may be unimportant upon what basis we place the right of a State to protect its citizens, as counter-legislation would be the beginning of resistance in either case; others may, perhaps, justly say, that the whole controversy is resolvable into a dispute as to what is, or is not, the proper definition of a constitutional right. We, however, think it of infinite importance, in urging the right of Nullification, to regard it as a *constitutional*, rather than as a natural remedy, because a constitutional proceeding is calculated to give it a pacific course and a higher recommendation. The characteristic, in fact, of the American Constitutions in general, is, that they sanctify the fundamental principles of the American Revolution. Whilst other nations have to resort to the law of nature, and by force to drive despots from their thrones—thus incurring what amongst them is odiously termed, the guilt of rebellion,—we here have the incalculable advantage of a thorough understanding amongst all classes, that it is the right as well as the duty, of a free people, to recur, when necessary, to their sovereign rights, to resist oppression. Such a sentiment as this becoming familiar to the public mind, acquires prodigious strength, when its spirit is seen to pervade a writ-

ten Constitution, and prevents rather than accelerates opportunities for an unnecessary recurrence to revolutionary movements. Under such a structure of the public sentiment, when the voice of a Sovereign State shall be spoken, "it will be heard in a tone, which virtuous governors will *obey*, and tyrannical ones shall DREAD." Nothing can more reconcile Nullification to our citizens, than to know, that if we are not proceeding according to the forms of the Constitution, we are, nevertheless, adhering to its *spirit*. The Convention which framed the Constitution, could not agree upon any mode of settling a dispute like the present. The case was, therefore, left unprovided for, under the conviction, no doubt, as is admitted by Mr. Hamilton in "The Federalist," that if the Federal Government should oppress the states, the State Governments would be ready to check it, by virtue of their own inherent sovereign powers. "It may be safely received as an AXIOM *in our political system* (says Mr. Hamilton) that the *State Governments will in all possible contingencies*, afford COMPLETE SECURITY against invasion of the public liberty by the *national authority. Projects of usurpation* cannot be *masked under pretences* so likely to escape the penetration of *select bodies* of men, as of the people at large—The LEGISLATURES will have better means of information. They can discover the danger at a distance; and, *possessing all the organs of* CIVIL POWER, and the confidence of the people, they can at once adopt A REGULAR PLAN OF OPPOSITION, in which they can *combine all the resources of the community*."

That measure cannot be revolutionary, which is adopted, not with a view to resort to force, but by some decisive measures to call the attention of the co-states to a disputed question, in such a form as to compel them to decide what are, or are not the rights of the States, in a case of a palpable and dangerous infraction of those fundamental principles of liberty, in which they all have an interest.

In the exercise of the right of Nullification, we are not unmindful of the many objections which have been urged against it. That it may embarrass the present majority in Congress, who are fatally bent upon building up the sectional interests of their constituents, upon the ruin of our commerce, we can readily imagine; but these embarrassments, on examination, will be found to proceed rather from an unwillingness, on their part, to adjust the controversy on principles of reason and justice, than from any real difficulty existing in the Constitution. The provisions of the Constitution are ample for taking the sense of the States on a question more important than any which has occurred since the formation of the Government. But if the spirit of justice departs from the councils, to which we have a right to look up, as the guardians of public liberty and the public peace, no provisions of human wisdom can avail. We have heard much of the danger of suffering one State to impede the operations of twenty-three states; but it must be obvious to every considerate man, that the danger can only exist where a State is wrong. If the people of any one State are *right* in the principles for which they contend, it is desirable that they should impede the operations of Congress, until the sentiments of its co-states shall be had. A higher eulogy could not be bestowed upon our system, than the power of resorting to some conservative principle, that shall stay a disruption of the league. It is no argument, to say that a State may have no grounds on which to place herself upon her sovereign rights. This is a possible, but by no means a probable case. Experience has given us a most instructive lesson on this very subject—it has taught us, that the danger is not that a State may resort to her sovereign rights too often, but that she will not avail herself of

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them when necessary. Look, fellow-citizens, to our State. For ten years we have petitioned and remonstrated against the unconstitutionality of the Tariff Acts, and though the conviction has been universal, that the effects of the system would be ruinous to our interests, yet the difficulty has been great, to bring the people to the resisting point.

And so with other objections. It has been maintained by us, that according to the philosophy of the government, and the true spirit of the compact, it becomes Congress in all emergencies like the present, to solicit from the states the call of a Convention. That upon such a convocation, it should be incumbent on the states claiming the doubtful power, to propose an amendment to the Constitution, giving the doubtful power, and on failure to obtain it by a consent of three-fourths of all the states, to regard the power as never having been intended to be given. We must not be understood to say, that this was matter even of implied stipulation, at the formation of the compact. The Constitution is designedly silent on the subject, on account of the extreme difficulty, in the minds of its framers, of appointing a mode of adjusting these differences. This difficulty we now discover was imaginary. It had its source in apprehensions, which an experience of upwards of forty years has proved to be without the shadow of a foundation. Many of the sages of that day were dissatisfied with their work, for a reason which is the very opposite of the truth. They feared, not that the General Government would encroach upon the rights of the states, but that the states would perpetually be disposed to pass their boundaries of power, and finally destroy the confederation.

Had they been blessed with the experience which we have acquired, there could have been no objection to trusting the states, who created the Government, and who would not wilfully embarrass it, with a veto under certain modifications. It seems but reasonable, that a *disputed* power, which it would have required three-fourths of the states to *add* to the Constitution, ought not to be insisted on by a majority in Congress, as impliedly conferred, if more than one-fourth should object to it. To deny this, would be to decide finally the validity of a power by a positive majority of the people at large, instead of a concurring majority of the States. There is, it is true, one objection, and only one, to this view, and that is, that under this theory, a majority little beyond the one-fourth, as for instance seven states out of twenty-four, might deprive Congress of powers which have been expressly delegated. The answer to this is, that it would be a very extreme case for a single State to claim the resumption of a power which it had clearly delegated in *positive* terms. But it seems almost beyond the range of possibility, that six other states should be found to sustain a nullifying State in such a pretension. Should such a case ever occur, as upwards of one-fourth of the states resolving to break their pledges, without the slightest pretence, it would show that it was time to dissolve the league. If a spirit of friendship and fair dealing cannot bind together the members of this Union, the sooner it is dissolved the better. So that this objection is rather nominal than substantial. But the evil of this objection is that whilst its admission would relieve us from an imaginary peril, we should be plunged into that certain danger of an unrestricted liberty of Congress to give us, instead of a confederated government, a government without any other limitation upon its power than the will of a majority.

Other objections have been urged against Nullification. It is said that the President or Congress might employ the military and naval force of

the United States to reduce the nullifying state into obedience, and thus produce a civil dissention amongst the members of the confederacy. We do not deem it necessary, in a community so conversant with this part of the subject as that of South Carolina, to recapitulate the arguments which have been urged against such an improbable course, both for want of power, and on the ground of expediency. But we cannot pass over one view, which we think sufficient to quiet all apprehension on that score. We live in an age of reason and intellect. The idea of using force on an occasion of this kind, is utterly at variance with the genius and spirit of the American people. In truth, it is becoming repugnant even to the genius and spirit of the governments of the old world. We have lately seen in England one of the greatest reforms achieved, which her history records—a reform which her wisest statesmen twenty years ago, would have predicted could not be accomplished without civil war, brought about by a bloodless revolution. The cause is manifest. Not only are the people every where better informed, but such is the influence which public opinion exerts over constituted authorities, that the rulers of this earth are more swayed by reason and justice than formerly. Under such evident indications of the march of mind and intellect, it would be to pay but a poor compliment to the people of these states, to imagine that a measure taken by a Sovereign State, with the most perfect good feeling to her confederates, and to the perpetuity of the Union, and with no other view than to force upon its members the consideration of a most important constitutional question, should terminate otherwise than peaceably.

Fellow-citizens, it is our honest and firm belief, that nullification will preserve, and not destroy, this Union. But we should regret to conceal from you that if Congress should not be animated with a patriotic and liberal feeling in this conjuncture, they can give to this controversy what issue they please. Admit, then, that there is risk of a serious conflict with the federal government. We know no better way to avoid the chance of hostile measures in our opponents, than to evince a readiness to meet danger, come from what quarter it will. We should think that the American Revolution was indeed to little purpose, if a consideration of this kind were to deter our people from asserting their sovereign rights. That revolution, it is well known, was not entered into by our Southern ancestors from any actual oppression, which the people suffered. It was a contest waged for PRINCIPLE, emphatically for principle. The calamities of revolution, strife, and civil war, were fairly presented to the illustrious patriots of those times, which tried the souls of men. The alternative was either to remain dependent colonies in hopeless servitude, or to become free, sovereign and independent states—To attain such a distinguished rank amongst the nations of the earth, there was but one path, and that the path of glory—the crowning glory of being accounted worthy of all suffering, and of embracing all the calamities of a protracted war abroad, and of domestic evils at home, rather than to surrender their liberties. The result of their labors is known to the world, through the flood of light which that revolution has shed upon the science of government, and the rights of man—in the "LESSON it has taught the oppresor, and in the EXAMPLE it has afforded to the oppressed"—in the invigoration of the spirit of freedom every where, and in the amelioration it is producing in the social order of mankind.

Inestimable are the blessings of that well regulated freedom which permits man to direct his labors and his enterprize to the pursuit or branch

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of industry for which he conceives nature has qualified him, unmolested by avarice enthroned in power. Such was the freedom for which South Carolina struggled when a dependent colony. Such is the freedom of which she once tasted as the first fruit of that revolutionary triumph which she assisted to achieve. Such is the freedom she reserved to herself on entering into the league. Such is the freedom of which she has been deprived, and to which she must be restored, if her commerce be worth preserving, or the spirit of her Laurens and her Gadsden has not fled forever from our bosoms. It is in vain to tell South Carolina that she can look to any administration of the federal government for the protection of her sovereign rights, or the redress of her southern wrongs. Where the fountain is so polluted, it is not to be expected that the stream will again be pure. The protection to which in all representative governments the people have been accustomed to look, to wit, the responsibility of the governors to the governed, has proved nerveless and illusory—under such a system, nothing but a radical reform in our political institutions can preserve this Union. It is full time that we should know what rights we have under the federal constitution, and more especially ought we to know whether we are to live under a consolidated government, or a confederacy of states—whether the states be sovereign, or their local Legislatures be mere corporations. A FRESH UNDERSTANDING OF THE BARGAIN we deem absolutely NECESSARY. No mode can be devised by which a dispute can be referred to the source of all power, but by some one state taking the lead in the great enterprize of reform. Till some one Southern State tenders to the Federal Government an issue, it will continue to have its "appetite increased by what it feeds on." History admonishes us that rulers never have the forecast to substitute in good time reform for revolution. They forget that it is always more desirable that the just claims of the governed should break in on them "through well contrived and well disposed windows, not through flaws and breaches, through the yawning chasm of their own ruin." One State must, under the awful prospects before us, throw herself into the breach in this great struggle for constitutional freedom. There is no other mode of awakening the attention of the co-states to grievances which if suffered to accumulate must dismember the Union. It has fallen to our lot, fellow-citizens, first to quit our trenches. Let us go on to the assault with cheerful hearts and undaunted minds.

Fellow-citizens, the die is now cast. We have solemnly resolved on the course which it becomes our beloved State to pursue—we have resolved that until these abuses shall be reformed, NO MORE TAXES SHALL BE PAID HERE. "Millions for defence, but not a cent for tribute." And now we call upon our citizens, native and adopted, to prepare for the crisis, and to meet it as becomes men and freemen. We call upon all classes and parties to forget their former differences, and to unite in a solemn determination never to abandon this contest until such a change be effected in the councils of the nation, that all the citizens of this confederacy shall participate equally in the benefits and the burthens of the government. To this solemn duty we now invoke you, in the name of all that is sacred and valuable to man. We invoke you in the name of that LIBERTY which has been acquired by you from an illustrious ancestry, and which it is your duty to transmit unimpaired to the most distant generations. We invoke you in the name of that CONSTITUTION which you profess to venerate, and of that UNION which you are all desirous to perpetuate. By the reverence you bear to these your institutions—by all the love you bear to liberty; by the detestation you have for ser-

vitude—by all the abiding memorials of your past glories—by the proud association of your exalted and your common triumphs in the first and greatest of our revolutions; by the force of all those sublime truths which that event has inculcated amongst the nations—by the noble flame of republican enthusiasm which warms your bosoms—we conjure you in this mighty struggle to give your hearts and souls and minds to your injured and oppressed State, and to support her cause publicly and privately, with your opinions, your prayers, and your actions. If appeals such as these prove unavailing, we then COMMAND YOUR OBEDIENCE to the laws and the authorities of the State, by a title which none can gain-say. We demand it by that Allegiance, which is reciprocal with the protection you have received from the State. We admit of no obedience to any authority, which shall conflict with that primary allegiance, which every citizen owes to the State of his birth or his adoption. There is not, nor has there ever been, "any *direct* or *immediate* allegiance between the citizens of South Carolina and the Federal Government. The relation between them is through the State." South Carolina having entered into the constitutional compact, as a separate, independent, political community, as has already been stated, has the right to declare an unconstitutional act of Congress, null and void—After her sovereign declaration that the act shall not be enforced within her limits, "such a declaration is obligatory on her citizens. As far as its citizens are concerned, the clear right of the State is to declare the extent of the obligation." This declaration once made, the citizen has no course, but TO OBEY. If he refuses obedience, so as to bring himself under the displeasure of his only and lawful sovereign, and within the severe pains and penalties, which by her high sovereign power the Legislature will not fail to provide in her self-defence, the fault and the folly must be his own.

And now, fellow-citizens, having discharged the solemn duty to which we have been summoned, in a crisis big with the most important results to the liberties, peace, safety, and happiness of this once harmonious but now distracted confederacy, we commend our cause to that great Disposer of events, who (if he has not already for some inscrutable purposes of his own, decreed otherwise) will smile on the efforts of truth and justice. We know that "unless the Lord keepeth the city, the watchman waketh but in vain;" but relying, as we do, in this controversy, on the purity of our *motives* and the honor of our *ends*, we make this appeal with all the confidence, which in times of trial and difficulty, ought to inspire the breast of the patriot and the christian. Fellow-citizens, DO YOUR DUTY TO YOUR COUNTRY, AND LEAVE THE CONSEQUENCES TO GOD.

ADDRESS,

To the People of Massachusetts, Virginia, New York, Pennsylvania, North Carolina, Maryland, Connecticut, Vermont, New Hampshire, Maine, New Jersey, Georgia, Delaware, Rhode Island, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama and Missouri.

We, the People of South Carolina, assembled in Convention, have solemnly and deliberately declared, in our paramount sovereign capacity, that the act of Congress approved the 19th day of May 1828, and the act approved the 14th July 1832, altering and amending the several acts imposing duties on imports, are unconstitutional, and therefore absolutely void, and of no binding force within the limits of this State; and for the purpose of carrying this declaration into full and complete effect, we have invested the legislature with ample powers, and made it the duty of all the functionaries and all the citizens of the State, on their allegiance, to co-operate in enforcing the aforesaid declaration.

In resorting to this important measure, to which we have been impelled by the most sacred of all duties which a free people can owe, either to the memory of their ancestors or to the claims of their posterity, we feel that it is due to the intimate political relation which exists between South Carolina and the other states of this confederacy, that we should present a clear and distinct exposition of the principles on which we have acted, and of the causes by which we have been reluctantly constrained to assume this attitude of sovereign resistance in relation to the usurpations of the Federal Government.

For this purpose, it will be necessary to state, briefly, what we conceive to be the relation created by the Federal Constitution, between the states and the General Government; and also what we conceive to be the true character and practical operation of the system of protecting duties, as it effects our rights, our interests and our liberties.

We hold, then, that on their separation from the Crown, of Great Britain, the several colonies became free and independent States, each enjoying the separate and independent right of self government; and that no authority can be exercised over them or within their limits, but by their consent, respectively given as states. It is equally true, that the Constitution of the United States is a compact formed between the several states, acting as sovereign communites; that the government created by it is a joint agency of the states, appointed to execute the powers enumerated and granted by that instrument; that all its acts not intentionally author-

ized are of themselves essentially null and void; and that the states have the right, in the same sovereign capacity in which they adopted the Federal Constitution, to pronounce in the last resort, authoritative judgment on the usurpations of the Federal Government, and to adopt such measures as they may deem necessary and expedient to arrest the operation of the unconstitutional acts of that Government, within their respective limits. Such we deem to be the inherent rights of the states; rights, in the very nature of things, absolutely inseparable from sovereignty. Nor is the duty of a State, to arrest an unconstitutional and oppressive act of the Federal Government, less imperative, than the right is incontestible. Each State, by ratifying the Federal Constitution, and becoming a member of the confederacy, contracted an obligation to "protect and defend" that instrument, as well by resisting the usurpations of the Federal Government, as by sustaining that government in the exercise of the powers actually conferred upon it. And the obligation of the oath which is imposed, under the Canstitution, on every functionary of the states, to "preserve, protect and defend" the Federal Constitution, as clearly comprehends the duty of protecting and defending it against the usurpations of the Federal Government, as that of protecting and defending it against violation in any other form or from any other quarter.

It is true, that in ratifying the Federal Constitution, the states placed a large and important portion of the rights of their citizens under the joint protection of all the States, with a view to their more effectual security; but it is not less true, that they reserved a portion still larger and not less important under their own immediate guardianship, and in relation to which their original obligation to protect their citizens, from whatever quarter assailed, remains unchanged and undiminished.

But clear and undoubted as we regard the right, and sacred as we regard the duty of the states to interpose their sovereign power, for the purpose of protecting their citizens from the unconstitutional and oppressive acts of the Federal Government, yet we are as clearly of the opinion, that nothing short of that high moral and political necessity, which results from acts of usurpation, subversive of the rights and liberties of the people, should induce a member of this confederacy to resort to this interposition. Such, however, is the melancholy and painful necessity under which we have declared the acts of Congress imposing protecting duties, null and void within the limits of South Carolina. The spirit and the principles which animated your ancestors and ours in the councils and in the fields of their common glory, forbid us to submit any longer to a system of Legislation now become the established policy of the Federal Government, by which we are reduced to a condition of colonial vassalage, in all its aspects more oppressive and intolerable than that from which our common ancestors relieved themselves by the war of the revolution. There is no right which enters more essentially into a just conception of liberty, than that of the free and unrestricted use of the productions of our industry wherever they can be most advantageously exchanged, whether in foreign or domestic markets. South Carolina produces, almost exclusively, agricultural staples, which derive their principal value from the demand for them in foreign countries. Under these circumstances, her natural markets are abroad; and restrictive duties imposed upon her intercourse with those markets, diminish the exchangeable value of her productions very nearly to the full extent of those duties.

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Under a system of free trade, the aggregate crop of South Carolina could be exchanged for a larger quantity of manufactures, by at least one third, than it can be now exchanged for under the protecting system. It is no less evident, that the value of that crop is diminished by the protecting system very nearly, if not precisely, to the extent that the aggregate quantity of manufactures which can be obtained for it, is diminished. It is, indeed, strictly philosophically true, that the quantity of consumable commodities which can be obtained for the cotton and rice annually produced by the industry of the State, is the precise measure of their aggregate value. But for the prevalent and habitual error of confounding the money price with the exchangeable value of our agricultural staples, these propositions would be regarded as self evident. If the protecting duties were repealed, one hundred bales of cotton or one hundred barrels of rice would purchase as large a quantity of manufactures, as one hundred and fifty will now purchase. The annual income of the State, its means of purchasing and consuming the necessaries and comforts and luxuries of life, would be increased in a corresponding degree.

Almost the entire crop of South Carolina, amounting annually to more than six millions of dollars, is ultimately exchanged either for foreign manufactures, subject to protecting duties, or for similar domestic manufactures. The *natural* value of the crop would be all the manufactures which we could obtain for it, under a system of unrestricted commerce. The *artificial* value, produced by the unjust and unconstitutional Legislation of Congress, is only such part of those manufactures as will remain after paying a duty of fifty per cent to the Government, or, to speak with more precision, to the Northern manufacturers. To make this obvious to the humblest comprehension, let it be supposed that the whole of the present crop should be exchanged, by the planters themselves, for those foreign manufactures, for which it is destined, by the inevitable course of trade, to be ultimately exchanged, either by themselves or their agents. Let it be also assumed, in conformity with the facts of the case, that New Jersey, for example, produces, of the very same description of manufactures, a quantity equal to that which is purchased by the cotton crop of South Carolina. We have, then, two States of the same confederacy, bound to bear an equal share of the burthens, and entitled to enjoy an equal share of the benefits of the common government, with precisely the same quantity of productions, of the same quality and kind, produced by their lawful industry. We appeal to your candor, and to your sense of justice, to say whether South Carolina has not a title as sacred and indefeasable, to the full and undiminished enjoyment of these productions of her industry, acquired by the combined operations of agriculture and commerce, as New Jersey can have to the like enjoyment of similar productions of her industry, acquired by the process of manufacture? Upon no principle of human reason or justice, can any discrimination be drawn between the titles of South Carolina and New Jersey to these productions of their capital and labor. Yet what is the discrimination actually made by the unjust, unconstitutional and partial Legislation of Congress? A duty, on an average, of fifty per cent, is imposed upon the productions of South Carolina, while no duty at all is imposed upon the similar productions of New Jersey! The inevitable result is, that the manufactures thus lawfully acquired by the honest industry of South Carolina, are worth, annually, three millions of dollars less to her citizens, than the very same quantity of the very same description of manufactures are worth to the

citizens of New Jersey—a difference of value produced exclusively by the operation of the protecting system.

No ingenuity can either evade or refute this proposition. The very axioms of geometry are not more self evident. For even if the planters of South Carolina, in the case supposed, were to sell and not consume these productions of their industry, it is plain that they could obtain no higher price for them, after paying duties to the amount of $3,000,000, than the manufacturers of New Jersey would obtain for the same quantity of the same kind of manufactures, without paying any duty at all.

This single view of the subject exhibits the enormous inequality and injustice of the protecting system, in such a light, that we feel the most consoling confidence that we shall be fully justified by the impartial judgment of posterity, whatever may be the issue of this unhappy controversy. We confidently appeal to our confederate states, and to the whole world, to decide whether the annals of human Legislation furnish a parallel instance of injustice and oppression, perpetrated under the forms of a free Government. However it may be disguised, by the complexity of the process by which it is effected, it is nothing less than the monstrous outrage of taking three millions of dollars annually, from the value of the productions of South Carolina, and transferring it to the people of other and distant communities. No human Government can rightfully exercise such a power. It violates the eternal principles of natural justice, and converts the Government into a mere instrument of legislative plunder. Of all the Governments on the face of the earth, the Federal Government has the least shadow of a constitutional right to exercise such a power. It was created principally, and almost exclusively, for the purpose of protecting, improving and extending that very commerce, which, for the last ten years, all its powers have been most unnaturally and unrighteously perverted to cripple and destroy. The power to "regulate commerce with foreign nations," was granted obviously for the preservation of that commerce. The most important of all duties which the Federal Government owes to South Carolina, under the compact of Union, is the protection and defence of her foreign commerce, against all the enemies by whom it may be assailed. And in what manner has this duty been discharged? All the powers of the earth, by their commercial restrictions, and all the pirates of the ocean, by their lawless violence, could not have done so much to destroy our commerce, as has been done by that very Government to which its guardianship has been committed by the Federal Constitution. The commerce of South Carolina consists in exchanging the staple productions of her soil, for the manufactures of Europe. It is a lawful commerce. It violates the rights of no class of people in any portion of the confederacy. It is this very commerce, therefore, which the Constitution has enjoined it upon Congress to encourage, protect and defend, by such regulations as may be necessary to accomplish that object. But instead of that protection, which is the only tie of our allegiance, as individual citizens, to the Federal Government, we have seen a gigantic system of restrictions gradually reared up, and at length brought to a fatal maturity, of which it is the avowed object, and must be the inevitable result, to sweep our commerce from the great highway of nations, and cover our land with poverty and ruin.

Even the states most deeply interested in the maintenance of the protecting system, will admit that it is the interest of South Carolina to carry on a commerce of exchanges with foreign countries free from restrictions,

prohibitory burthens, or incumbrances of any kind. We feel, and we know, that the vital interests of the State, are involved in such a commerce. It would be a downright insult to our understandings, to tell us that our interests are not injured, deeply injured, by those prohibitory duties, intended and calculated to prevent us from obtaining the cheap manufactures of foreign countries for our staples, and to compel us to receive for them the dear manufactures of our domestic establishments, or pay the penalty of the protecting duties for daring to exercise one of the most sacred of our natural rights. What right, then, human or divine, have the manufacturing states—for we regard the Federal Government as a mere instrument in their hands—to prohibit South Carolina, directly or indirectly, from going to her natural markets, and exchanging the rich productions of her soil, without restriction or incumbrance, for such foreign articles as will most conduce to the wealth and prosperity of her citizens? It will not surely be pretended—for truth and decency equally forbid the allegation—that in exchanging our productions for the cheaper manufactures of Europe, we violate any right of the domestic manufacturers, however gratifying it might be to them, if we would purchase their inferior productions at higher prices.

Upon what principle, then, can the State of South Carolina be called upon to submit to a system, which excludes her from her natural markets, and the manifold benefits of that enriching commerce which a kind and beneficent Providence has provided to connect her with the family of nations, by the bonds of mutual interest? But one answer can be given to this question. It is in vain to attempt to disguise the fact, mortifying as it must be, that the principle by which South Carolina is thus excluded, is in strict propriety of language, and to all rational intents and purposes, a principle of colonial dependence and vassalage, in all respects identical with that which restrained our forefathers from trading with any manufacturing nation of Europe, other than Great Britain. South Carolina now bears the same relation to the manufacturing states of this Confederacy, that the Anglo-American colonies bore to the mother country, with the single exception, that our burthens are incomparably more oppressive than those of our ancestors. Our time, our pride, and the occasion, equally forbid us to trace out the degrading analogy. We leave that to the historian who shall record the judgement which an impartial posterity will pronounce upon the eventful transactions of this day.

It is in vain that we attempt to console ourselves by the empty and unreal mockery of our representation in Congress. As to all those great and vital interests of the State which are effected by the protecting system, it would be better that she had no representation in that body. It serves no other purpose but to conceal the chains which fetter our liberties, under the vain and empty forms of a representative Government. In the enactment of the protecting system, the majority of Congress is, in strict propriety of speech, an irresponsible despotism. A very brief analysis will render this clear to every understanding. What, then, we ask, is involved in the idea of political responsibility, in the imposition of public burthens? It clearly implies that those who impose the burthens, should be responsible to those who bear them. Every representative in Congress should be responsible, not only to his own immediate constituents, but through them and their common participation in the burthens imposed, to the constituents of every other representative. If, in the enactment of a protecting tariff, the majority in Congress imposed upon their own constituents the same burthens which they impose upon the people of South Carolina, that majority would act under

all the restraints of political responsibility, and we should have the best security which human wisdom has yet devised against oppressive legislation.

But the fact is precisely the reverse of this. The majority in Congress, in imposing protecting duties, which are utterly destructive of the interests of South Carolina, not only impose no burthens, but actually confer enriching bounties upon their constituents, proportioned to the burthens they impose upon us. Under these circumstances, the principle of representative responsibility is perverted into a principle of absolute despotism. It is this very tie, binding the majority of Congress to execute the will of their constituents, which makes them our inexorable oppressors. They dare not open their hearts to the sentiments of human justice, or to the feelings of human sympathy. They are tyrants by the very necessity of their position, however elevated may be their principles, in their individual capacities.

The grave question, then, which we have had to determine, as the Sovereign Power of the State, upon the awful responsibility under which we have acted, is, whether we will voluntarily surrender the glorious inheritance, purchased and consecrated by the toils, the sufferings and the blood of an illustrious ancestry, or transmit that inheritance to our posterity, untarnished and undiminished. We could not hesitate in deciding this question. We have, therefore, deliberately and unalterably, resolved, that we will no longer submit to a system of oppression, which reduces us to the degrading condition of tributary vassals; and which would reduce our posterity, in a few generations, to a state of poverty and wretchedness, that would stand in melancholy contrast with the beautiful and delightful region, in which the Providence of God has cast our destinies.

Having formed this resolution, with a full view of all its bearings, and of all its probable and possible issues, it is due to the gravity of the subject, and the solemnity of the occasion, that we should speak to our confederate brethren, in the plain language of frankness and truth. Though we plant ourselves upon the Constitution, and the immutable principles of justice, and intend to operate exclusively through the civil tribunals and civil functionaries of the State; yet, we *will* throw off this oppression, *at every hazard.* We believe our remedy to be essentially peaceful. We believe the Federal Government has no shadow of right or authority, to act against a sovereign State of the Confederacy, in any form, much less to coerce it by military power. But we are aware of the diversities of human opinion, and have seen too many proofs of the infatuation of human power, not to have looked, with the most anxious concern, to the possibility of a resort to military or naval force on the part of the Federal Government—and in order to obviate the possibility of having the history of this contest stained by a single drop of fraternal blood, we have solemnly and irrevocably resolved, that we will regard such a resort as a dissolution of the political ties which connect us with our confederate states; and will, forthwith, provide for the organization of a new and separate Government.

We implore you, and particularly the manufacturing states, not to believe that we have been actuated, in adopting this resolution, by any feeling of resentment or hostility towards them; or by a desire to dissolve the political bonds which have so long united our common destinies. We still cherish that rational devotion to the Union, by which this State has been pre-eminently distinguished in all times past. But that blind and idolatrous devotion, which would bow down and worship

Oppression and Tyranny, veiled under that consecrated title—if it ever existed amongst us—has now vanished forever. CONSTITUTIONAL LIBERTY is the only idol of our political devotion; and, to preserve that, we will not hesitate a single moment to surrender the Union itself, if the sacrifice be necessary. If it had pleased God to cover our eyes with ignorance—if he had not bestowed upon us the understanding to comprehend the enormity of the oppression under which we labor—we might submit to it without absolute degradation and infamy. But the gifts of Providence cannot be neglected, or abused, with impunity. A people, who deliberately submit to oppression, with a full knowledge that they are oppressed, are fit only to be slaves; and all history proves that such a people will soon find a master. It is the pre-existing spirit of slavery, in the people, that has made tyrants in all ages of the world. No tyrant ever made a slave—no community, however small, having the spirit of freemen, ever yet had a master. The most illustrious of those states which have given to the world examples of human freedom, have occupied territories not larger than some of the districts of South Carolina; while the largest masses of population that were ever united under a common Government, have been the abject, spiritless and degraded slaves of despotic rulers. We sincerely hope, therefore, that no portion of the states of this Confederacy will permit themselves to be deluded into any measures of rashness, by the vain imagination that South Carolina will vindicate her rights and liberties, with a less inflexible and unfaltering resolution, with a population of some half a million, than she would do with a population of twenty millions.

It does not belong to freemen to count the costs, and calculate the hazards of vindicating their rights, and defending their liberties; and even if we should stand alone in the worst possible- emergency of this great controversy, without the co-operation or encouragement of a single State of the confederacy, we will march forward with an unfaultering step, until we have accomplished the object of this great enterprise.

Having now presented, for the consideration of the Federal Government and our confederate states, the fixed and final determination of this State, in relation to the protecting system, it remains for us to submit a plan of taxation, in which we would be willing to acquiesce, in a spirit of liberal concession, provided we are met in due time, and in a becoming spirit, by the states interested in the protection of manufactures.

We believe, that upon every just and equitable principle of taxation, the whole list of protected articles should be imported free of all duty, and that the revenue derived from import duties, should be raised exclusively from the unprotected articles; or that whenever a duty is imposed upon protected articles imported, an excise duty of the same rate, should be imposed upon all similar articles manufactured in the United States. This would be as near an approach to perfect equality as could possibly be made, in a system of indirect taxation. No substantial reason can be given for subjecting manufactures, obtained from abroad, in exchange for the productions of South Carolina, to the smallest duty, even for revenue, which would not show that similar manufactures made in the United States, should be subject to the very same rate of duty. The former, not less than the latter, are, to every rational intent, the productions of domestic industry, and the mode of acquiring the one, is as lawful and more conducive to the public prosperity, than that of acquiring the other.

But we are willing to make a large offering to preserve the Union; and with a distinct declaration that it is a concession on our part, we will consent that the same rate of duty may be imposed upon the protected articles that shall be imposed upon the unprotected, provided that no more revenue be raised than is necessary to meet the demands of the Government for Constitutional purposes; and provided also, that a duty, substantially uniform, be imposed upon all foreign imports.

It is obvious, that even under this arrangement, the manufacturing states would have a decided advantage over the planting states. For it is demonstrably evident that, as communities, the manufacturing states would bear no part of the burthens of Federal Taxation, so far as the revenue should be derived from protected articles. The earnestness with which their representatives seek to increase the duties on these articles, is conclusive proof that those duties are bounties, and not burthens, to their constituents. As at least two-thirds of the federal revenue would be raised from protected articles, under the proposed modification of the Tariff, the manufacturing states would be entirely exempted from all participation in that proportion of the public burthens.

Under these circumstances, we cannot permit ourselves to believe, for a moment, that in a crisis marked by such portentous and fearful omens, those states can hesitate in acceding to this arrangement, when they perceive that it will be the means, and possibly the only means, of restoring the broken harmony of this great confederacy. They, most assuredly, have the strongest of human inducements, aside from all considerations of justice, to adjust this controvery, without pushing it to extremities. This can be accomplished only by the proposed modification of the Tariff, or by the call of a general Convention of all the states. If South Carolina should be driven out of the Union, all the other planting States, and some of the Western States, would follow by an almost absolute necessity. Can it be believed that Georgia, Mississippi, Tennessee, and even Kentucky, would continue to pay a tribute of fifty per cent, upon their consumption, to the Northern States, for the privilege of being united to them, when they could receive all their supplies through the ports of South Carolina, without paying a single cent of tribute?

The separation of South Carolina would inevitably produce a general dissolution of the Union; and as a necessary consequence, the protecting system, with all its pecuniary bounties to the Northern States, and its pecuniary burthens upon the Southern States, would be utterly overthrown and demolished, involving the ruin of thousands and hundreds of thousands in the manufacturing States.

By these powerful considerations connected with their own pecuniary interests, we beseech them to pause and contemplate the disastrous consequences which will certainly result from an obstinate perseverance on their part, in maintaining the protecting system. With them, it is a question merely of pecuniary interest, connected with no shadow of right, and involving no principle of liberty. With us, it is a question involving our most sacred rights—those very rights which our common ancestors left to us as a common inheritance, purchased by their common toils, and consecrated by their blood. It is a question of liberty on the one hand, and slavery on the other. If we submit to this system of unconstitutional oppression, we shall voluntarily sink into slavery, and transmit that ignominious inheritance to our children. We will not, we cannot, we dare not, submit to this degradation; and our resolve is fixed and unalterable, that

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a protecting tariff shall be no longer enforced within the limits of South Carolina. We stand upon the principles of everlasting justice, and no human power shall drive us from our position.

We have not the slightest apprehension that the General Government will attempt to force this system upon us by military power. We have warned our brethren of the consequences of such an attempt. But if, notwithstanding, such a course of madness should be pursued, we here solemnly declare, that this system of oppression shall never prevail in South Carolina, until none but slaves are left to submit to it. We would infinitely prefer that the territory of the State should be the cemetery of freemen, than the habitation of slaves. Actuated by these principles, and animated by these sentiments, we will cling to the pillars of the temple our liberties, and if it must fall, we will perish amidst the ruins.

RESOLUTIONS

RESPECTING THE PROCLAMATION OF THE PRESIDENT OF THE UNITED STATES.

ADOPTED, DECEMBER 17, 1832.

(See Pamphlet Laws, Reports and Resolutions of 1832, *p.* 37.*)*

In the House of Representatives, December 17, 1832.

Whereas, The President of the United States has issued his proclamation, denouncing the proceedings of this State, calling upon the citizens to renounce their primary allegiance, and threatening them with military coercion, unwarranted by the Constitution, and utterly inconsistent with the existence of a free State; be it therefore,

Resolved, That his Excellency the Governor be requested, forthwith, to issue his proclamation, warning the good people of this State against the attempt of the President of the United States to seduce them from their allegiance, exhorting them to disregard his vain menaces, and to be prepared to sustain the dignity, and protect the liberty of the State, against the arbitrary measures proposed by the President.

Resolved, That the House do agree to the preamble and resolution. Ordered, that it be sent to the Senate for their concurrence.

By order of the House.

R. ANDERSON, C. H. R.

In the Senate, December 17, 1832.

Resolved, That Senate do concur. Ordered to be returned to the House of Representatives. By order of Senate.

JACOB WARLEY, C. S.

REPORT

OF THE COMMITTEE ON FEDERAL RELATIONS.

DECEMBER 20, 1832.

(See Pamphlet Laws, Reports and Resolutions of 1832, *p.* 29.*)*

In the House of Representatives, December 20, 1832.

The committee on federal relations, to which was referred the proclamation of the President of the United States, have had it under consideration, and recommend the adoption of the following resolutions:

Resolved, That the power vested by the constitution and laws in the President of the United States, to issue his proclamation, does not authorize him, in that mode, to interfere, whenever he may think fit, in the affairs of the respective states, or that he should use it as a means of promulgating executive expositions of the Constitution, with the sanction of force, thus superceding the action of the other departments of the General Government.

Resolved, That it is not competent to the President of the United States, to order by proclamation the constituted authorities of a State to repeal their legislation; and that the late attempt of the President to do so, is unconstitutional, and manifests a disposition to arrogate and exercise a power utterly destructive of liberty.

Resolved, That the opinions of the President, in regard to the rights of the states, are erroneous and dangerous, leading not only to the establishment of a consolidated government in the stead of our free confederacy, but to the concentration of all power in the chief executive.

Resolved, That the proclamation of the President is the more extraordinary, that he has silently, and as it supposed with entire approbation, witnessed our sister state of Georgia avow, act upon, and carry into effect, even to the taking of life, principles identical with those now denounced by him in South Carolina.

Resolved, That each State of this Union has the right, whenever it may deem such a course necessary for the preservation of its liberties or vital interests, to secede peaceably from the Union; and that there is no constitutional power in the General Government, much less in the executive department of that government, to retain by force such state in the Union.

Resolved, That the primary and paramount allegiance of the citizens of this state, native or adopted, is of right due to this state.

Resolved, That the declaration of the President of the United States, in his said proclamation, of his personal feelings and relations towards

the State of South Carolina, is rather an appeal to the loyalty of subjects, than to the patriotism of citizens, and is a blending of official and individual character, heretofore unknown in our state papers, and revolting to our conceptions of political propriety.

Resolved, That the undisguised indulgence of personal hostility in the said proclamation, would be unworthy the animadversion of this legislature, but for the solemn and official form of the instrument which is made its vehicle.

Resolved, That the principles, doctrines and purposes, contained in the said proclamation, are inconsistent with any just idea of a limited government, and subversive of the rights of the States and liberties of the people, and if submitted to in silence would lay a broad foundation for the establishment of monarchy.

Resolved, That while this Legislature has witnessed with sorrow such a relaxation of the spirit of our institutions, that a President of the United States dare venture upon this highhanded measure, it regards with indignation the menaces which are directed against it, and the concentration of a standing army on our borders—that the State will repel force by force, and, relying upon the blessing of God, will maintain its liberty at all hazards.

Resolved, That copies of these resolutions be sent to our members in Congress, to be laid before that body.

Resolved, That the House do agree to the report. Ordered, that it be sent to Senate for concurrence. By order of the House.

R. ANDERSON, C. H. R.

In the Senate, December 20, 1832.

Resolved, That Senate do concur. Ordered to be returned to the House of Representatives. By order of the Senate.

JACOB WARLEY, C. S.

PROCLAMATION, BY THE GOVERNOR OF SOUTH CAROLINA.

DECEMBER 21, 1832.

Whereas, the President of the United States hath issued his Proclamation concerning an "ORDINANCE OF THE PEOPLE OF SOUTH CAROLINA, to nullify certain acts of the Congress of the United States," laying "duties and imposts for the protection of domestic manufactures:"

And whereas, the Legislature of South Carolina, now in session, taking into consideration the matters contained in the said Proclamation of the President, have adopted a Preamble and Resolution to the following effect, viz.

"*Whereas*, the President of the United States has issued his Proclamation, denouncing the proceedings of this State, calling upon the citizens thereof to renounce their primary allegiance, and threatening them with military coercion, unwarranted by the Constitution, and utterly inconsistent with the existence of a free State; be it therefore,

Resolved, That His Excellency the Governor be requested, forthwith, to issue his Proclamation, warning the good people of this State against the attempt of the President of the United States to seduce them from their allegiance, exhorting them to disregard his vain menaces, and to be prepared to sustain the dignity, and protect the liberty of the State, against the arbitrary measures proposed by the President."

Now, I, ROBERT Y. HAYNE, Governor of South Carolina, in obedience to the said Resolution, do hereby issue this my Proclamation, solemnly warning the good people of this State against the dangerous and pernicious doctrines promulgated in the said Proclamation of the President, as calculated to mislead their judgments as to the true character of the government under which they live, and the paramount obligation which they owe to the State, and manifestly intended to seduce them from their allegiance, and by drawing them to the support of the violent and unlawful measures contemplated by the President, to involve them in the guilt of REBELLION. I would earnestly admonish them to beware of the specious but false doctrines by which it is now attempted to be shown that the several States have not retained their entire sovereignty, that "the allegiance of their citizens was transferred *in the first instance* to the Government of the United States," that "a State cannot be said to be sovereign and independent, whose citizens owe obedience to laws not made by it;" that "even under the royal government we had no separate character," that the Constitution has created "a national government," which is not "a compact between Sovereign States"—"that a State has NO RIGHT TO SECEDE"—in a word, that ours is a NATIONAL GOVERNMENT, in which the people of all the States are represented, and by which we

are constituted "ONE PEOPLE"—and "that our representatives in Congress are all representatives of the United States, and not of the particular States from which they come"—doctrines which uproot the very foundation of our political system—annihilate the rights of the States—and utterly destroy the liberties of the citizen.

It requires no reasoning to show what the bare statement of these propositions demonstrate, that such a Government as is here described, has not a single feature of a confederated republic. It is in truth an accurate delineation, drawn with a bold hand, of a great consolidated empire, "one and indivisible;" and under whatever specious form its powers may be masked, it is in fact the worst of all despotisms, in which the spirit of an arbitrary government is suffered to pervade institutions professing to be free. Such was not the Government for which our fathers fought and bled, and offered up their lives and fortunes as a willing sacrifice. Such was not the Government which the great and patriotic men who called the Union into being in the plenitude of their wisdoms framed. Such was not the Government which the fathers of the republican faith, led on by the Apostle of American Liberty, promulgated and successfully maintained in 1798, and by which they produced the great political revolution effected at that auspicious era. To a Government based on such principles, South Carolina has not been a voluntary party, and to such a Government she never will give her assent.

The records of our history do, indeed, afford the prototype of these sentiments, which is to be found in the recorded opinion of those who, when the Constitution was framed, were in favor of a "firm National Government," in which the States should stand in the same relation to the Union, that the colonies did towards the mother country. The Journals of the Convention and the secret history of the debates, will show that this party did propose to secure to the Federal Government an absolute supremacy over the States, by giving them a negative upon their laws, but the same history also teaches us that all these propositions were rejected, and a Federal Government was finally established, recognizing the sovereignty of the States, and leaving the constitutional compact on the footing of all other compacts between "parties having no common superior."

It is the natural and necessary consequence of the principles thus authoritatively announced by the President, as constituting the very basis of our political system, that the Federal Government is unlimited and supreme; being the exclusive judge of the extent of its own powers, the laws of Congress sanctioned by the Executive and the Judiciary, whether passed in direct violation of the Constitution and rights of the States, or not, are "the supreme law of the land." Hence it is that the President obviously considers the words, "made in pursuance of the Constitution," as mere surplusage; and therefore, when he professes to recite the provision of the Constitution on this subject, he states that our "SOCIAL COMPACT in express terms declares that the *Laws of the United States*, its Constitution, and the Treaties made under it, are the supreme law of the land," and speaks throughout of "the explicit supremacy given to the laws of the Union over those of the States"—as if a law of Congress was of itself supreme, while it was necessary to the validity of a treaty that it should be made in pursuance of the Constitution. Such, however, is not the provision of the Constitution. That instrument expressly provides that "the Constitution, and laws of the United States *which shall be made in pursuance thereof*, shall be the supreme law of the land, any thing in the Constitution or laws of any State to the contrary notwithstanding."

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Here it will be seen that a law of Congress, as such, can have no validity unless made "in pursuance of the Constitution." An unconstitutional act is therefore null and void, and the only point that can arise in this case, is whether, to the Federal Government, or any department thereof, has been exclusively reserved the right to decide authoritatively *for the States* this question of Constitutionality. If this be so, to which of the departments, it may be asked, is this right of final judgment given? If it be to Congress, then is Congress not only elevated above the other departments of the Federal Government, but it is put above the Constitution itself. This, however, the President himself has publicly and solemnly denied, claiming and exercising, as is known to all the world—the right to refuse to execute acts of Congress and solemn treaties, even after they had received the sanction of every department of the Federal Government.

That the Executive possesses this right of deciding finally and exclusively as to the validity of acts of Congress, will hardly be pretended—and that it belongs to the Judiciary, except so far as may be necessary to the decision of questions which may incidentally come before them, in "cases of law and equity," has been denied by none more strongly than the President himself, who on a memorable occasion refused to acknowledge the binding authority of the Federal Court, and claimed for himself and has exercised the right of enforcing the laws, not according to their judgment, but "his own understanding of them." And yet when it serves the purpose of bringing odium upon South Carolina, "his native State," the President has no hesitation in regarding the attempt of a State to release herself from the controul of the Federal Judiciary, in a matter affecting her sovereign rights, as a violation of the Constitution.

It is unnecessary to enter into an elaborate examination of the subject. It surely cannot admit of a doubt, that by the Declaration of Independence the several Colonies became "free, sovereign, and independent States," and our political history will abundantly show that at every subsequent change in their condition up to the formation of our present Constitution, the States preserved their sovereignty. The discovery of this new feature in our system, that the States exist only as members of the Union—that before the Declaration of Independence we were known only as "United Colonies"—and that even under the articles of confederation the States were considered as forming "collectively ONE NATION"—without any right of refusing to submit to "any decision of Congress"—was reserved to the President and his *immediate predecessor*. To the latter "belongs the *invention*, and upon the former will unfortunately fall the evils of reducing it to practice."

South Carolina holds the principles now promulgated by the President (as they must always be held by all who claim to be supporters of the rights of the States) "as contradicted by the letter of the Constitution—unauthorized by its spirit—inconsistent with every principle on which it was founded—destructive of all the objects for which it was framed"—utterly incompatible with the very existence of the States—and absolutely fatal to the rights and liberties of the people. South Carolina has so solemnly and repeatedly expressed to Congress and the World the principles which she believes to constitute the very pillars of the Constitution, that it is deemed unnecessary to do more at this time, than barely to present a summary of those great fundamental truths, which she believes can never be subverted without the inevitable destruction of the liberties of the people and of the Union itself. South Carolina has never claimed (as is asserted by the President,) the right of "repealing at pleasure, all the

revenue laws of the Union," much less the right of "repealing the Constitution itself, and laws passed to give it effect which have *never been alleged to be unconstitutional*." She claims only the right to judge of infractions of the Constitutional compact, in violation of the reserved rights of the State, and of arresting the progress of usurpation within her own limits; and when, as in the Tariffs of 1828 and 1832, revenue and protection—constitutional and unconstitutional objects—have been so mixed up together, that it is found impossible to draw the line of discrimination, she has no alternative, but to consider the whole as a system, unconstitutional in its character, and to leave it to those who have "woven the web, to unravel the threads." South Carolina insists, and she appeals to the whole political history of our country in support of her position, "that the Constitution of the United States is a compact between Sovereign States—that it creates a confederated republic, not having a single feature of nationality in its foundation—that the people of the several States as distinct political communities ratified the Constitution, each State acting for itself, and binding its own citizens, and not those of any other State, the act of ratification declaring it to be binding on the States so ratifying—the States are its authors—their power created it—their voice clothed it with authority—the government which it formed is composed of their agents, and the Union of which it is the bond is a Union of States and not of individuals—that as regards the foundation and extent of its power, the government of the United States is strictly what its name implies, a Federal Government—that the States are as sovereign now as they were prior to the entering into the compact—that the Federal Constitution is a confederation in the nature of a treaty, or an alliance, by which so many Sovereign States agreed to exercise their sovereign powers *conjointly* upon certain objects of external concern in which they are equally interested, such as WAR, PEACE, COMMERCE, Foreign Negotiation, and Indian Trade; and upon all other subjects of civil government, they were to exercise their sovereignty *separately*.

"For the convenient conjoint exercise of the sovereignty of the States, there must of necessity be some common agency or functionary. This *agency* is the Federal Government. It represents the confederated States, and executes their joint will, as expressed in the compact. The powers of this government are wholly *derivative*. It possesses no more inherent sovereignty than an incorporated town, or any other great corporate body—it is a political corporation, and like all corporations, it looks for its powers to an exterior source. That source is the States.

"South Carolina claims that by the Declaration of Independence, she became and has ever since continued a free, sovereign and Independent State.

"That as a Sovereign State, she has the *inherent* power, to do all those acts, which by the law of nations, any Prince or Potentate may of right do. That like all independent States, she neither has, nor ought she to suffer, any other restraint upon her sovereign will and pleasure, than those high moral obligations, under which all Princes and States are bound before God and man, to perform their solemn pledges. The inevitable conclusion from what has been said, therefore, is, that as in all cases of compact between Independent Sovereigns, where from the very nature of things there can be no common judge or umpire, each sovereign has a right "to judge as well of infractions, as of the mode and measure of redress," so in the present controversy between South Carolina and the Federal Government, it belongs solely to her, by her delegates in solemn Convention assembled, to decide, whether the federal compact be violated,

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and what remedy the State ought to pursue. South Carolina therefore cannot, and will not yield to any department of the Federal Government, a right which enters into the essence of all sovereignty, and without which it would become a bauble and a name."

Such are the doctrines which South Carolina has, through her Convention, solemnly promulgated to the world, and by them she will stand or fall: such were the principles promulgated by Virginia in '98, and which then received the sanction of those great men, whose recorded sentiments have come down to us a light to our feet and a lamp to our path. It is Virginia and not South Carolina, who speaks when it is said that she "views the powers of the Federal Government, as resulting from *the compact, to which the States are parties*, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil and for maintaing within their respective limits, the "authorities, rights and liberties, appertaining to them."

It is Kentucky who declared in '99, speaking in the explicit language of Thomas Jefferson, that "the principles and construction contended for by members of the State Legislatures [the very same now maintained by the President] that the General Government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism—since the discretion of those who administer the government, and not the constitution, would be the measure of their powers: That the several States who formed the instrument being sovereign and independent, have the unquestionable right to judge of the infraction, and THAT A NULLIFICATION BY THOSE SOVEREIGNTIES, OF ALL UNAUTHORIZED ACTS DONE UNDER COLOUR OF THAT INSTRUMENT, IS THE RIGHTFUL REMEDY."

It is the great Apostle of American liberty himself, who has consecrated these principles, and left them as a legacy to the American people, recorded by his own hand. It is by him that we are instructed—* that to the Constitutional compact, "each State acceded as a State, and is an integral party, its co-states forming as to itself the other party;" that "they alone being parties to the compact are solely authorized *to judge in the last resort* of the powers exercised under it; Congress being not a party but merely the creature of the compact;" "that it becomes a sovereign State to submit to undelegated, and consequently unlimited power, in no man or body of men, upon earth; that where powers are assumed which have not been delegated [the very case now before us] a nullification of the act is the rightful remedy; that every State has a natural right in cases not within the compact [*casus non fœderis*] to nullify of their own authority all assumption of power by others within their limits; and that without this right they would be under the dominion absolute and unlimited, of whomsoever might exercise the right of judgment for them;" and that in case of acts being passed by Congress "so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the General Government, but that it will proceed to exercise over the States all powers whatsoever, it would be the duty of the States to declare the acts *void*

* See original draught of the Kentucky Resolutions, in the hand-writing of Mr. Jefferson, lately published by his grandson.

and of no *force*, and that *each should take measures of its own* for providing that neither such acts, nor any other of the General Government not plainly and intentionally authorized by the Constitution, shall be exercised with their respective territories."

It is on these great and essential truths, that South Carolina has now acted. Judging for herself as a sovereign State, she has pronounced the Protecting System, in all its branches, to be a "gross, deliberate, and palpable violation of the Constitutional compact;" and having exhausted every other means of redress, she has, in the exercise of her sovereign rights as one of the parties to that compact, and in the performance of a high and sacred duty, interposed for arresting the evil of usurpation, within her own limits—by declaring these acts to be "null, void, and no law, and taking measures of her own, that they shall not be enforced within her limits."

South Carolina has not "assumed" what could be considered as at all doubtful, when she asserts "that the acts in question, were in reality intended for the protection of manufactures;" that their "operation is unequal;" that "the amount received by them, is greater than is required by the wants of the government"—and finally, "that the proceeds are to be applied to objects unauthorized by the Constitution." These facts are notorious—these objects openly avowed. The President, without instituting any inquisition into motives, has himself discovered, and publicly denounced them; and his officer of finance is even now devising measures intended, as we are told, to correct these acknowledged abuses.

It is a vain and idle dispute about words, to ask whether this right of State Interposition may be most properly styled a Constitutional, a sovereign, or a reserved right. In calling this right constitutional, it could never have been intended to claim it as a right granted by, or derived from the Constitution, but it is claimed as consistent with its genius, its letter and its spirit; it being not only distinctly understood, at the time of ratifying the Constitution, but expressly provided for, in the instrument itself, that all sovereign rights, not agreed to be exercised conjointly, should be exerted separately by the States. Virginia declared, in reference to the right asserted in the Resolutions of '98, above quoted, even after having fully and accurately re-examined and re-considered those Resolutions, "that she found it to be her indispensable duty to adhere to the same, as founded in truth, as *consonant with* the Constitution, and as conducive to its welfare;" and Mr. Madison himself asserted them to be perfectly "constitutional and conclusive."

It is wholly immaterial, however, by what name this right may be called, for if the Constitution be "a compact to which the States are parties," if "acts of the Federal Government are no further valid than they are authorized by the grants enumerated in that compact," then we have the authority of Mr. Madison himself for the inevitable conclusion that it is, "a plain principle illustrated by common practice, and essential to the nature of compacts, that when resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judge in the last resort, whether the bargain made has been pursued or violated." The Constitution, continues Mr. Madison, "*was formed* by the sanction of the *States, given by each* in its sovereign capacity: the States, then, being parties to the constitutional compact, and in their sovereign capacity, it follows, of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated; and, consequently, that as the parties to it, they must themselves decide in the last resort, such

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questions as may be of sufficient magnitude to require their interposition."

If this right does not exist in the several States, then it is clear that the discretion of Congress, and not the Constitution, would be the measure of their powers; and this, says Mr. Jefferson, would amount to the "seizing the rights of the States and consolidating them in the hands of the General Government, with a power assumed to bind the States, not only in cases made federal, but in all cases whatsoever; which would be to surrender the form of Government we have chosen, to live under one deriving its power from its own will."

We hold it to be impossible to resist the argument, that the several States as sovereign parties to the compact, must possess the power, in cases of "gross, deliberate and palpable violation of the Constitution, to judge *each for itself*, as well of the infraction as the mode and measure of redress," or ours is a CONSOLIDATED GOVERNMENT "without limitation of powers,"—a submission to which Mr. Jefferson has solemnly pronounced to be a greater evil than disunion itself. If, to borrow the language of Madison's report, "the deliberate exercise of dangerous powers palpably withheld by the Constitution, could not justify the parties to it, *in interposing* even so far as to *arrest the progress of the evil*, and thereby to PRESERVE THE CONSTITUTION ITSELF, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the State Constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared."

The only plausible objection that can be urged against this right, so indispensable to the safety of the States, is that it may be abused. But this danger is believed to be altogether imaginary. So long as our Union is felt as a blessing—and this will be just so long as the federal government shall confine its operation within the acknowledged limits of the Charter—there will be no temptation for any State to interfere with the harmonious operation of the system. There will exist the strongest motives to induce forbearance, and none to prompt to aggression on either side, so soon as it shall come to be universally felt and acknowledged that the States do not stand to the Union in the relation of degraded and dependant colonies, but that our bond of union is formed by mutual sympathies and common interests. The true answer to this objection has been given by Mr. Madison when he says—

"It does not follow, however, that because the States, as sovereign parties to the constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed, either in a hasty manner, or on doubtful and inferior occasions. Even in the case of ordinary conventions between different nations, it is always laid down that the breach must be both wilful and material to justify an application of the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only deeply and essentially affecting the vital principles of their political system."

Experience demonstrates that the danger is not that a State will resort to her sovereign rights too frequently or on light and trivial occasions, but that she may shrink from asserting them as often as may be necessary.

It is maintained by South Carolina, that according to the true spirit of

the Constitution it becomes Congress, in all emergencies like the present, either to remove the evil by legislation, or to solicit of the States the call of a Convention; and that on a failure to obtain, by the consent of three-fourths of all the States, an amendment giving the disputed power, it must be regarded as never having been intended to be given. These principles have been distinctly recognized by the President himself, in his message to Congress at the commencement of the present session, and they seem only to be impracticable absurdities when asserted by South Carolina, or made applicable to her existing controversy with the Federal Government.

But it seems that South Carolina receives from the President no credit for her sincerity, when it is declared through her Chief Magistrate, that "she sincerely and anxiously seeks and desires" the submission of her grievances to a Convention of all the States. "The only alternative (says the President) which she presents, is the *repeal of all the acts for raising revenue*, leaving the government without the means of support, or an acquiescence in the *dissolution of our Union*." South Carolina has presented no such alternatives. If the President had read the documents which the Convention caused to be forwarded to him for the express purpose of making known her wishes and her views, he would have found that South Carolina asks no more than that the Tariff should be reduced to the *revenue standard*; and has distinctly expressed her willingness, that "an amount of duties substantially uniform, should be levied upon protected, as well as unprotected articles, sufficient to raise *the revenue* necessary to meet the demands of the government, for constitutional purposes." He would have found in the Exposition, put forth by the Convention itself, a distinct appeal to our sister States, for the call of a Convention; and the expression of an entire willingness, on the part of South Carolina, to submit the controversy to that tribunal. Even at the very moment when he was indulging in these unjust and injurious imputations upon the people of South Carolina, and their late highly respected Chief Magistrate, a resolution had actually been passed through both branches of our Legislature, demanding a call of that very Convention, to which he declares that she had no desire that an appeal should be made.

It does not become the dignity of a Sovereign State, to notice in the spirit which might be considered as belonging to the occasion, the unwarrantable imputations in which the President has thought proper to indulge, in relation to South Carolina, the proceedings of her citizens and constituted authroities. He has noticed, only to give it countenance, that miserable slander which imputes the noble stand that our people have taken in defence of their rights and liberties, to a faction instigated by the efforts of a few ambitious leaders, who have got up an excitement for their own personal aggrandizement. The motives and characters of those who have been subjected to these unfounded imputations, are beyond the reach of the President of the United States. The sacrifices they have made, and difficulties and trials through which they may have yet to pass, will leave no doubt as to the disinterested motives and noble impulse of patriotism and honor by which they are actuated. Could they have been induced to separate their own personal interests from those of the people of South Carolina, and have consented to abandon their duty to the State, no one knows better than the President himself, that they might have been honored with the highest manifestations of public regard, and perhaps instead of being the objects of vituperation, might even now have been basking in the sunshine of

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Executive favor. This topic is alluded to, merely for the purpose of guarding the people of our sister States against the fatal delusion that South Carolina has assumed her present position under the influence of a temporary excitement; and to warn them that it has been the result of the slow but steady progress of public opinion for the last ten years: that it is the act of the people themselves, taken in conformity with the spirit of resolutions repeatedly adopted in their primary assemblies; and the solemn determination of the Legislature, publicly announced more than two years ago. Let them not so far deceive themselves, on this subject, as to persevere in a course which must in the end inevitably produce a dissolution of the Union, under the vain expectation that the great body of the people of South Carolina, listening to the councils of the President, will acknowledge their error or retrace their steps; and still less that they will be driven from the vindication of their rights, by the intimation of the danger of domestic discord, and threats of lawless violence. The brave men who have thrown themselves into the breach, in defence of the rights and liberties of their country, are not to be driven from their holy purpose by such means. Even unmerited obloquy, and death itself, have no terrors for him who feels and knows that he is engaged in the performance of a sacred duty. The people of South Carolina are well aware, that however passion and prejudice may obtain for a season the mastery of the public mind, reason and justice must sooner or later re-assert their empire: and that whatever may be the event of this contest, posterity will do justice to their motives, and to the spotless purity, and devoted patriotism, with which they have entered into an arduous and most unequal conflict, and the unfaltering courage with which, by the blessing of Heaven, they will maintain it.

The whole argument, so far as it is designed at this time to enter into it, is now disposed of; and it is necessary to advert to some passages in the Proclamation which cannot be passed over in silence. The President distinctly intimates that it is his determination to exert the right of putting down the opposition of South Carolina to the Tariff, *by force of Arms*. He believes himself invested with power to do this under that provision of the Constitution which directs him "to take care that the laws be faithfully executed." Now, if by this it was only meant to be asserted, that under the laws of Congress now of force, the President would feel himself bound to aid the civil tribunals in the manner therein prescribed, supposing such laws to be constitutional, no just exception could be taken to this assertion of Executive duty. But if, as is manifestly intended, the President sets up the claim to judge for himself, in what manner the laws are to be enforced, and feels himself at liberty to call forth the militia, and even the military and naval forces of the Union, against the State of South Carolina, her constituted authorities and citizens, then it is clear that he assumes a power not only not conferred on the Executive by the constitution, but which belongs to no despot upon earth exercising a less unlimited authority than the Autocrat of all the Russias: an authority which, if submitted to, would at once reduce the free people of these United States, to a state of the most abject and degraded slavery. But the President has no power whatsoever, to execute the Laws, except in the mode and manner prescribed by the Laws themselves. On looking into these Laws, it will be seen that he has no shadow or semblance of authority to execute any of the threats which he has thrown out against the good people of South Carolina. The Act of 28 February, 1795, gives the President authority to call forth the Militia

in case of invasion "by a foreign nation or Indian Tribe." By the 2nd section of that Act, it is provided that "whenever the Laws of the United States shall be opposed, or the execution thereof obstructed in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this Act, it shall be lawful for the President of the United States to call forth the Militia of such State, or of any other State or States, as may be necessary to suppress such combinations, and to cause the Laws to be duly executed." GOVERNOR'S PROCLAMATION. 1832.

The words here used, though they might be supposed to be very comprehensive in their import, are restrained by those which follow. By the next section it is declared that "whenever it may be necessary in the judgement of the President to use the Military force hereby directed to be called forth, the President shall forthwith, by Proclamation, COMMAND SUCH INSURGENTS TO DISPERSE and retire peaceably to their respective abodes within a limited time." On reading these two sections together, it is manifest that they relate entirely to combinations of individuals acting of themselves without any lawful authority. The constituted authorities acting under the laws of the State, and its citizens yielding obedience to its commands, cannot possibly be considered as a mere mob forming combinations against the authority and laws of the Union, to be dispersed by an Executive Proclamation, and any attempt so to treat them, would be a gross and palpable violation of the sovereign authority of the State, and an offence punishable criminally in her own Courts. Whether the late proclamation of the President was intended as a compliance with the provisions of this act, does not very clearly appear. But if so, it can only be considered as directed against the State, since the Laws of the United States have certainly not been forcibly obstructed by combinations of any sort, and it is certainly worthy of observation that the command extended to the people is not that they should *disperse*, but that they should *re-assemble* in Convention and repeal the obnoxious Ordinance.

The power of the President, so far as this subject is embraced, in relation to the Army and Navy, is exactly co-extensive with that over the Militia. By the 1st section of Act of 3d March 1807, it is expressly provided, that in all cases of "obstruction to the laws of the United States, or of any individual State, where it is lawful for the President to call forth the Militia for the purpose of causing the laws to be duly executed, it shall be lawful for him to employ for the same purpose, such part of the land or naval force of the United States as may be necessary, having first observed all the pre-requisites of the law in that respect." Here then it is seen, that unless the President is resolved to disregard all constitutional obligations, and to trample the laws of his country under his feet, he has no other authority whatever to use force against the State of South Carolina, and should he attempt to do so, the patriotic citizens of this State know too well their own rights, and have too sacred a regard to their duties, to hesitate one moment, in repelling invasion, come from what quarter it may. Could they be deterred by the threats of lawless violence, or any apprehension of consequences, from the faithful performance of their duty, they would feel that they were the unworthy descendants of the "Pinckneys, Sumters, and Rutledges, and a thousand other names which adorn the pages of our revolutionary history," some of whom have just gone from among us, and been gathered to their fathers, leaving as a legacy their solemn injunction that we should never abandon this contest until we shall have obtained

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"*a fresh understanding of the bargain*," and restored the liberties for which they fought and bled. Others still linger among us, animating us by their example, and exhorting us to maintain that "solemn Ordinance and Declaration" which they have subscribed with their own names, and in support of which they have "pledged their lives, their fortunes and their sacred honor."

The annals which record the struggles of freedom, show us that Rulers, in every age and every country, jealous of their power, have resorted to the very same means to extinguish in the bosom of man that noble instinct of liberty which prompts him to resist oppression. The system by which Tyrants in every age have attempted to obliterate this sentiment and to crush the spirit of the people, consists in the skilful employment of promises and threats, in alternate efforts to encourage their hopes and excite their fears—to show that existing evils are exaggerated, the danger of resistance great—and the difficulties in the way of success insuperable; and finally to sow dissentions among the people, by creating jealousies and exciting a distrust of those whose counsels and example may be supposed to have an important bearing on the success of their cause.

These, with animated appeals to the loyalty of the people, and an imposing array of military force, constitute the means by which the people have in every age been reduced to slavery. When we turn to the pages of our own history, we find that such were the measures resorted to at the commencement of our own glorious revolution, to keep our fathers in subjection to Great Britain; and such are the means now used to induce the people of Carolina to "*re-trace their steps*," and to remain forever degraded colonists, governed not in reference to their own interests, but the interests of others. Our Fathers were told, as we now are, that their grievances were in a great measure imaginary. They were promised, as we have been, that those grievances should be redressed. They were told, as we now are, that the people were misled by a few designing men, whose object was a dissolution of the Union, and their own self aggrandizement. They were told, as we now are, of the *Danger* that would be incurred by disobedience to the Laws. The power and resources of the Mother Country were then, as now, ostentatiously displayed in insulting contrast with the scattered population and feeble resources on which we could alone rely. And the punishment due to Treason and Rebellion, was held out as the certain fate of all who should disregard the paternal efforts of their Royal Master, to bring back his erring children to the arms of their indulgent Mother. They were commanded, as we have been, to "re-trace their steps." But though divided among themselves to a greater extent than we are now, without an organized Government, and destitute of arms and resources of every description, they bid defiance to the tyrant's power, and refused obedience to his commands. They incurred the legal guilt of Rebellion, and braved the dangers, both of the scaffold and the field, in opposition to the colossal power of their acknowledged sovereign, rather than submit to the imposition of taxes light and inconsiderable in themselves, but *imposed without their consent, for the benefit of others.* And what is our present condition? We have an organized Government, and a population three times as great as that which existed in '76. We are maintaining not only the rights and liberties of the people, but the sovereignty of our own State, against whose authority rebellion may be committed, but in obedience to whose commands no man can commit treason. We are struggling against unconstitutional and oppressive

taxation imposed upon us, not only without our consent, but in defiance of our repeated remonstrances and solemn protests. In such a quarrel, our duty to our country, ourselves and our posterity, is too plain to be mistaken. We will stand upon the soil of Carolina and maintain the sovereign authority of the State, or be buried beneath its ruins. As unhappy Poland fell before the power of the Autocrat, so may Carolina be crushed by the power of her enemies,—but Poland was not surrounded by free and independent States, interested, like herself, in preventing the establishment of the very tyranny which they are called upon to impose upon a sister State. If, in spite of our common kindred and common interests, the glorious recollections of the past, and the proud hopes of the future, South Carolina should be coldly abandoned to her fate, and reduced to subjection, by an unholy combination among her sister States—which is believed to be utterly impossible—and the doctrines promulgated by the President are to become the foundation of a new system cemented by the blood of our citizens, it matters not what may be our lot. Under such a Government, as there could be no liberty, so there could be no security either for our persons or our property.

But there is one consolation, of which, in the providence of God, no people can be deprived without their own consent. The proud conciousness of having done their duty. If our country must be enslaved, let her not be dishonored by her own sons! Let them not "*forge the chains themselves by which their liberties are to be manacled.*"

The President has intimated in his Proclamation that a "standing Army," is about to be raised to carry secession into effect. South Carolina desires that her true position shall be clearly understood, both at home and abroad. Her object is not "disunion"—she has raised no "standing Army," and if driven to repel invasion or resist aggression, she will do so by the strong arms and stout hearts of her citizens. South Carolina has solemnly proclaimed her purpose; that purpose is the *vindication of her rights*. She has professed a sincere attachment to the Union, and that to the utmost of her power she will endeavor to preserve it, "but believes that for this end, it is her duty to watch over and oppose any infraction of those principles which constitute the only basis of that union, because a faithful observance of them can alone secure its existence; that she venerates the CONSTITUTION, and will protect and defend it "against every aggression either foreign or domestic;" but above all, that she estimates as beyond all price her LIBERTY, which she is unalterably determined never to surrender while she has the power to maintain it."

The President denies in the most positive terms, the right of a State, under any circumstances, to secede from the Union; and puts this denial on the ground "that from the time the States parted with so many powers as to constitute jointly, with the other States, a *single nation*, they cannot from that period possess any right to secede." What then remains of those "rights of the States" for which the President professes so "high a reverence." In what do they consist? And by what tenure are they held? The uncontrouled will of the federal government. Like any other petty corporation, the States may exert such powers, and such only, as may be permitted by their superiors. When they step beyond these limits, even a federal officer will set at naught their decrees, repeal their solemn ordinances, proclaim their citizens to be TRAITORS, and reduce them to subjection by military force; and if driven to desperation, they should seek a refuge in secession, they are to be told that they have bound themselves to those who have perpetrated

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or permitted these enormities, in the iron bonds of a *"perpetual union."* If these principles could be established, then indeed would the days of our liberty be numbered, and the republic will have found *a master.* If South Carolina had not already taken her stand against the usurpation of the federal government, here would have been an occasion, when she must have felt herself impelled by every impulse of patriotism and every sentiment of duty, to stand forth, in open defiance of the arbitrary decree of the executive. When a sovereign State is denounced, her authority derided, the allegiance of her citizens denied, and she is threatened with military power to reduce her to obedience to the will of one of the functionaries of the federal government, by whom she is *commanded* to "tear from her archieves" her most solemn decrees—surely the time has come when it must be seen, whether the people of the several States have indeed lost the spirit of the revolution, and whether they are to become the willing instruments of an unhallowed despotism. In such a sacred cause, South Carolina will feel that she is not striking for her own, but the liberties of the Union and the RIGHTS of MAN, and she confidently trusts, that the issue of this contest will be an example to freemen, and a lesson to rulers throughout the world.

FELLOW-CITIZENS—In the name and behalf of the State of South Carolina, I do once more solemnly warn you against all attempts to seduce you from your primary allegiance to the State,—I charge you to be faithful to your duty as citizens of South Carolina, and earnestly exhort you to disregard those "vain menaces" of military force, which, if the President, in violation of all his constitutional obligations, and of your most sacred rights, should be tempted to employ, it would become your solemn duty at all hazards to resist. I require you to be fully prepared to sustain the dignity and protect the liberties of the State, if need be, with your "lives and fortunes." And may that great and good BEING, who as a "father careth for his children," inspire US with that HOLY ZEAL IN A GOOD CAUSE, which is the BEST SAFEGUARD OF OUR RIGHTS AND LIBERTIES.

L S

In testimony whereof, I have caused the seal of the State to be hereunto affixed, and have signed the same with my hand.

Done at Columbia, this 20th day of December, in the Year of our Lord, 1832, and in the Independence of the United States, the fifty-seventh.

ROBERT Y. HAYNE.

By the Governor.

SAMUEL HAMMOND, *Secretary of State.*

AN ACT

To carry into effect in part, an Ordinance to Nullify certain Acts of the Congress of the United States, purporting to be laws laying duties on the importation of foreign commodities, passed in Convention of this State, at Columbia, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-two.

Preamble.

WHEREAS, by the said Ordinance, it is declared and ordained, "That the several Acts, and parts of Acts, of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States, and more especially an Act entitled an Act in alteration of the several acts imposing duties on imports, approved on the nineteenth day of May, one thousand eight hundred and twenty-eight, and also an Act entitled an Act to alter and amend the several Acts imposing duties on imports, approved on the fourteenth day of July, one t ousand eight hundred and thirty-two, are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null, void, and no law, nor binding upon this State, its officers or citizens." And whereas, also, by the said Ordinance, it is ordained that it shall be the duty of the Legislature to adopt such measures, and pass such Acts, as may be necessary to give full effect to that Ordinance, and to prevent the enforcement, and arrest the operation of the said Acts and parts of Acts of the Congress of the United States, within the limits of this State, from and after the first day of February next; now, therefore, to carry into effect in part, the said Ordinance:

How to recover Goods seized under the Acts of Congress.

SEC. 1. *Be it enacted by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same,* That from and after the first day of February next, if any goods, wares or merchandize, shall be seized or detained, under pretence of securing the duties imposed by any of the said several Acts or parts of Acts, of the Congress of the United States, so annulled by the Ordinance as aforesaid, or for the non payment of any such duties, or under any process, order or decree, mesne or final, or other pretext, contrary to the true intent and meaning of the said Ordinance, the person or persons to whom the said goods, wares or merchandize are consigned, or who may be lawfully entitled to the possession of the same, may, upon making affidavit of such seizure or detention, proceed to recover possession thereof, and damages, by an action of replevin; and the proceedings therein shall be as in other cases of replevin, according to the law and usages of this State, except as modified or altered by this Act; or such person or persons may proceed in any other manner, authorized by law, in cases of unlawful seizure or detention of personal property.

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Plaintiff to give bond and security in full value of said Goods.

SEC. 2. *Be it further enacted*, That before the Sheriff shall deliver the said goods to the plaintiff, in replevin, it shall be his duty to take from the said plaintiff a bond, with good and sufficient security, in the penal sum of the full value of the said goods, with the condition that he will prosecute the said suit with effect, and well and truly abide and fulfil the final judgement and determination of the Court therein.

Authorizing sheriff to distrain on personal property when a writ of replevin cannot be executed.

SEC. 3. *Be it further enacted*, That in case of refusal to deliver the said goods, or of removal of the same in any way, so that the writ of replevin cannot be executed, on the return of the Sheriff to that effect, and an affidavit made before any justice of the quorum that the said goods had been seized and detained, and of the refusal to deliver the same, or that the same had been removed as aforesaid, and of the value thereof, the plaintiff in replevin may sue out a writ in the nature of a *capias in withernam*, authorizing and requiring the Sheriff of any of the districts of this State, to distrain the personal estate of the person or persons so refusing to deliver the said goods or removing the same so that the said process cannot be executed. And the Sheriff shall thereupon seize and take into his possession any personal estate of the defendant or defendants, to the amount of double the value so sworn as aforesaid, and hold the same at the proper expense of the owner or owners thereof, until the said goods are produced and delivered to the said Sheriff. Provided, that nothing in this clause contained shall be in any manner construed to deprive the Sheriff of any right and power which he now has by law in the execution of the writ of replevin.

For the recovery of re-captured Goods.

SEC. 4. *Be it further enacted*, That if after the delivery of the said goods by the Sheriff to the Plaintiff, in replevin, any attempt should be made to recapture, or to seize the same, or the same should be actually recaptured or seized, under pretence of securing the duties imposed by any of the several acts of Congress aforesaid, or for the non-payment of any such duties, or under any process, order, or decree, or other pretext, contrary to the true intent and meaning of the Ordinance aforesaid, it shall be the duty of the Sheriff, on affidavit made to that effect, to prevent such re-capture or seizure, or to re-deliver the goods to the Plaintiff, in replevin, as the case may be, and the Sheriff shall have the same power and authority for that purpose as he had in the original execution of the writ of replevin.

For the recovery of duties paid.

SEC. 5. *Be it further enacted by the authority aforesaid*, That if any person shall pay any of the duties imposed by either of the acts of Congress aforesaid, the person so paying may recover back the same, together with the interest thereon, in an action for money had and received, in any Court of competent jurisdiction: Provided, that such action be brought within one year from the time of said payment.

How to act in case of an arrest.

SEC. 6. *Be it further enacted by the authority aforesaid*, That if any person shall be arrested or imprisoned, by virtue of any order or execution for the enforcement or satisfaction of any judgment or decree obtained in any Federal Court for duties claimed under the acts of Congress, so annulled as aforesaid, or upon any other proceedings contrary to the true intent and meaning of the said Ordinance, he shall be entitled to all the benefits and privileges secured to the citizen in case of unlawful arrest or imprisonment, by the statute made of force in this State, commonly called the Habeas Corpus Act; and he may also maintain an action of trespass for such unlawful arrest or imprisonment.

For the recovery of property levied on or sold.

SEC. 7. *Be it further enacted by the authority aforesaid*, That if any real or personal estate of any person shall be seized, or levied on, or sold by virtue of any Fieri Facias, or other process for the enforcement or

satisfaction of any judgement or decree, obtained in any Federal Court, for duties claimed under the acts of Congress, so annulled as aforesaid, such seizure, levy, or sale, shall be held and regarded, in the Courts of this State, as illegal, and such sale shall in no wise divest, or in any manner impair the title of the defendant, in such suit or action, to the property thus sold. ACT TO CARRY ORDINANCE INTO EFFECT. 1832.

SEC. 8. *Be it further enacted*, That if any Clerk, Commissioner, Master or Register, shall furnish a record, or a copy of a record in his office, of any case in Law or Equity, wherein is drawn in question the authority of the said Ordinance, or the validity of the Acts of the Legislature, passed to give effect thereto, or the validity of the said Acts of Congress, or permit or allow any such record, or a copy of such record, to be taken for any purpose, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, be punished by fine, not exceeding one thousand, nor less than one hundred dollars, and by imprisonment, not exceeding one year nor less than one month. Penalty for furnishing a record.

SEC. 9. *Be it further enacted*, That if any person shall disobey, obstruct or resist any process granted or allowed by this Act, or shall eloign, secrete or wilfully remove any goods, wares or merchandize, or do any other act, so as to prevent the same from being replevied, according to the provisions of the first section of this Act, such person, his aiders and abettors, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine, not exceeding five thousand dollars, nor less than one thousand dollars, and be imprisoned for a term not exceeding two years, nor less than six months; besides being liable to indictment, or other proceeding allowed by law, for any other offence involved in the commission of said misdemeanor. Penalty for resisting process under this Act.

SEC. 10. *Be it further enacted*, That should any person, after the delivery of any goods by the Sheriff to the Plaintiff, in replevin, as herein provided, re-capture or seize, or attempt to re-capture or seize the same, under pretence of securing the duties imposed by any of the several acts of Congress aforesaid, or for the non-payment of any such duties, or under any process, order or decree, or other pretext, contrary to the true intent and meaning of the Ordinance aforesaid, such person, his aiders or abettors, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine, not exceeding ten thousand, nor less than three thousand dollars, and imprisonment, for a term not exceeding two years, nor less than one year, besides being liable to indictment, or other proceeding allowed by law, for any other offence involved in the commission of said misdemeanor. Penalty for seizing goods after delivery by sheriff.

SEC. 11. *Be it further enacted*, That if any of the keepers of the public gaols in this State, shall receive and detain any person arrested or committed by virtue of any order, process or other judicial proceedings made, had or issued to enforce the payment or collection of any of the duties imposed by, or claimed under, the said acts of Congress, annulled by the Ordinance aforesaid, or on any other proceedings contrary to the true intent and meaning of the said Ordinance, such keeper shall be guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned for a term not exceeding one year, nor less than one month, and fined in a sum not exceeding one thousand dollars, nor less than one hundred dollars, and shall also be liable to the person aggrieved, in an action of trespass. Penalty for a gaoler's detaining any one for disobeying an annulled law.

SEC. 12. *Be it further enacted*, That if any person or persons shall knowingly let or hire, or use, or permit to be used, any place, house or building, to serve as a gaol for the detention or confinement of any per- Penalty for hiring or using as a prison, &c.

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son arrested or committed by virtue of any order, process or other judicial proceedings made, had or issued to enforce the payment or collection of any duties imposed by the said acts of Congress annulled by the Ordinance aforesaid, or upon any other proceedings contrary to the true intent and meaning of the said Ordinance, he or they shall be guilty of a misdemeanor, and upon conviction thereof, shall be imprisoned for a term not exceeding one year, nor less than one month, and fined in a sum not exceeding one thousand dollars, nor less than one hundred dollars.

Traverse not allowed.

SEC. 13. *Be it further enacted*, That no Indictment under this Act shall be subject to Traverse.

Fines paid to Treasury.

SEC. 14. *Be it further enacted*, That the fines collected under this Act shall be paid into the public Treasury.

Ordinance or Act given in evidence.

SEC. 15. *Be it further enacted*, That on the trial of any suit or action, in which shall be brought in question the Ordinance aforesaid, or this Act the same may be given in evidence without being specially pleaded.

This Act, when to take effect.

SEC. 16. *Be it further enacted*, That this Act shall commence and be of force from and after the first day of February next.

In the Senate House, the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of the Independence of the United States of America.

H. DEAS, *President of the Senate.*

H. L. PINCKNEY, *Speaker of the House of Representatives.*

AN ACT

Concerning the Oath required by the Ordinance passed in Convention at Columbia, the twenty-fourth day of November, one thousand eight hundred and thirty-two.

Preamble. SEC. 1. WHEREAS, by the Ordinance passed in Convention of this State, at Columbia, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-two, it is ordained, that all persons now holding any office of honor, profit, or trust, civil or military, under this State, Members of the Legislature excepted, shall, within such time, and in such manner, as the Legislature shall prescribe, take an oath, well and truly to obey, execute, and enforce the said Ordinance, and such Act or Acts of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same, and on the neglect or omission of any such person or persons so to do, his or their office or offices shall be forthwith vacated, and shall be filled up, as if such person or persons were dead or had resigned; and no person hereafter elected to any office of honor, profit or trust, civil or military, Members of the legislature excepted, shall, until the Legislature shall otherwise provide and direct, enter on the execution of his office, or be in any respect competent to discharge the duties thereof, until he shall, in like manner, have taken a similar oath:—

Form of Oath *Be it therefore enacted, by the Senate and House of Representatives, and by the authority of the same,* That the form of said oath shall be as follows: "I do solemnly swear (or affirm) that I will well and truly obey, execute, and enforce the Ordinance to nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts upon the importation of foreign commodites, passed in Convention of this State, at Columbia, on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-two, and all such Act or Acts of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same: so help me God."

How and by whom Oath administered. SEC. 2. *And be it further enacted,* That the said Oath may be administered by any person authorized by law to administer an oath, and likewise by all military officers, to those under their command; and the administration thereof shall be authenticated by the signatures of the person administering, and the person taking the same. In cases of military officers, a certificate of the oath, so authenticated, shall be endorsed on their commission; and in cases of civil officers, the persons administering said oath, shall make a certificate, shewing the name, residence, and office of the officer taking said oath, with the date when administered; in the case of a civil officer, whose duties are confined to a single District, the certificate shall be lodged in the office of the Clerk of the

ACT REQUIRING OATH.

Court of Common Pleas, or Commissioner in Equity, for the District in which the officer resides, and in all other cases the certificate shall be lodged in the office of the Secretary of State.

Time for Oath to be taken.

SEC. 3. *And be it further enacted*, That every Judge of the Court of Appeals, Judge of the Circuit Court, Chancellor, and Recorder of the City Court of Charleston, now in office, shall take the said oath, at or before the time when he shall sit in judgment upon any case or matter, civil or criminal, at Chambers or in open Court, in which shall be in question, directly or indirectly, the aforesaid Ordinance, or any Act or Acts of the Legislature that may be passed in pursuance thereof: And every civil officer who held his office at the passing of the said Ordinance, shall take the said oath, before, or at the time when, in the execution of his office, he may be required to perform any duty consequent upon, or in any wise connected with the said Ordinance, or any Act of the Legislature passed in pursuance thereof, except the administering of an oath, or filing a certificate under this act.

Time for military officers to take the Oath.

SEC. 4. *And be it further enacted*, That every military officer, who held his office at the passing of the said Ordinance, shall take the said oath, before, or at the time, when he shall be called into service, under any Act of the Legislature passed in pursuance of the said Ordinance, or for carrying the same into effect.

When the Governor may require the Oath to be taken.

SEC. 5. *And be it further enacted*, That the Governor may, whenever in his opinion the public interests demand it, by Proclamation, require all, or any particular officers, civil or military, within the State, or within any particular District thereof, to take the said oath, within not less than one week from the publication of the Proclamation, in the District in which such officer may be, and such officer shall take the oath within the time required by the said Proclamation; and on refusal, neglect or omission to do so, by any such officer, his office shall be vacated.

In the Senate House, the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-two, and the fifty-seventh year of the Independence of the United States of America.

H. DEAS, *President of the Senate.*
H. L. PINCKNEY, *Speaker of the House of Representatives.*

See Sect. 10 of the act to provide for the Military organization of the State, passed 19th Dec. 1833, and the cases on allegiance, 2 Hill's Rep. p. 1.

DOCUMENTS RELATING TO THE *CONVENTION.*

SECOND SESSION, WHICH BEGAN MARCH 11, 1833.

[I.]

LETTER FROM THE GOVERNOR OF THE STATE TO THE PRESIDENT OF THE CONVENTION.

EXECUTIVE DEPARTMENT,
Columbia, March 11, 1833.

To JAMES HAMILTON, Jun. Esq.

President of the Convention of the People of South Carolina.

SIR—I herewith transmit you a letter which I have received from the Hon. Benjamin Watkins Leigh, Commissioner from the State of Virginia, which, together with the Correspondence in relation to Mr. Leigh's Mission, and the Resolutions of Virginia, of which he is the bearer, you are requested to lay before the Assembly over which you preside.

I am very respectfully,
Your obedient servant,
ROBERT Y. HAYNE.

COLUMBIA, MARCH 11TH, 1833.

SIR—Having, at our first interview, presented you the Resolutions of the General Assembly of Virginia of the 26th January last, on the subject of Federal Relations, I have now to request your Excellency to lay those Resolutions before the Convention of the People of South Carolina, which, at my instance, has been re-assembled for the purpose of considering them.

The General Assembly of Virginia has expressed, in its own language, its sentiments concerning the unhappy controversy between the State of South Carolina and the Federal Government, and its motives, its views

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and object, in making this intercession. In these respects, therefore, the Commissioner it has thought proper to depute to South Carolina, can have nothing to add, and nothing even to explain. The duty presented to him is simple and precise. He is instructed to communicate the Preamble and Resolutions to the proper Authorities of this State, and "to give them such direction as in his judgment may be best calculated to promote the objects which the Legislature of Virginia has in view:" and this part of his duty he has already, by the prompt and cordial compliance of those Authorities, had the happiness to accomplish, to the entire satisfaction (as he has reason to believe) of the Legislature of Virginia. And he is further instructed and "authorized to express to the public Authorities and People of this, our sister State, the sincere good will of the Legislature and People of Virginia, towards their sister State, and their anxious solicitude that the kind and respectful representations they have addressed to her, may lead to an accommodation of the differences between this State and the General Government."

Virginia is animated with an ardent and devoted attachment to the Union of the States, and to the rights of the several States that compose the Union: and if similarity of situation and of interests naturally induce her to sympathize, with peculiar sensibility, in whatever effects the prosperity and happiness of South Carolina, and the other Southern States, she knows how to reconcile this sentiment with her affection and duty towards each and every other State, severally, and towards the United States. She is most solicitous to maintain and preserve our present institutions, which, though they partake of imperfection, from which no human institutions can ever be exempt, and notwithstanding some instances of mal-administration or error, to which all governments are liable, are yet, as she confidently believes, the happiest frame of polity that is now or ever has been enjoyed by any people—to maintain and preserve *the whole, and every part of these institutions*, in full vigor and purity; to uphold the Union, and the States; to maintain the Federal Government in all its just powers, administered according to the pure principles of the Constitution, without the least departure from the limitations prescribed by the compact, fairly understood; and the State Governments in all their rights and authority, as absolutely necessary to the good government and happiness of their respective citizens. Consolidation and disunion are alike abhorrent from her affections and her judgment—the one involving, *at the least*, a forfeiture of the manifold advantages and blessings so long and so generally felt and acknowledged to have been derived from the Union; and the other having an apparent, perhaps inevitable tendency to military despotism. And she is apprehensive, for reasons too obvious to need particular mention, that in case any differences between the Federal Government and the States shall ever be brought to the arbitrament of force, the result, let it be what it may, must effect such a change in our existing institutions as cannot but be evil, since it would be a change from those forms of government which we have experienced to be good, and under which we have certainly been, in the main, free, prosperous, contented and happy. Therefore, in the present controversy between the Federal Government and the State of South Carolina, she deprecates any resort to force by either, and is sanguine in the hope, that, with proper moderation and forbearance on both sides, this controversy may be adjusted (as all our controversies hitherto have been) by the influence of truth, reason and justice.

Virginia, remembering the history of South Carolina, her services in war and in peace, and her contributions of virtue and intelligence to the

common councils of the Union, and knowing well the generosity, the magnanimity, and the loyalty of her character, entertained the most perfect confidence, that these sentiments, so cherished by herself, would find a response in the heart and understanding of every citizen of this State. And that confidence induced her intercession on the present occcasion. She has not presumed to dictate, or even to advise. She has addressed her *entreaty* to the Congress of the United States, to redress the grievance of which South Carolina complains. And she has spoken to South Carolina also, as one Sovereign State, as one State of this Union, ought to speak to another. She has earnestly, affectionately, and respectfully *requested and entreated* South Carolina "to rescind or suspend her late Ordinance, and to await the result of a combined and strenuous effort of the friends of Union and Peace, to effect an adjustment and conciliation of all public differences now unhappily existing." She well hoped, that this State "would listen willingly and respectfully to *her* voice;" for she knew and felt that South Carolina could not descend from the dignity, and would nowise compromit the rights of her sovereignty, by yielding to the intercession of a sister State.

If, therefore, no other considerations could have been presented to the Convention of the People of South Carolina, if no other motives for compliance could have been suggested, than the intercession of Virginia, offered in the temper and manner it has been, and the interest we all have in the Union, the common attachment we feel for our *tried* republican institutions, the aversion from civil discord and commotion, and the wise and just dread of changes of which no sacacity can foresee the consequences—it might have been hoped and expected, that the Convention would rescind, or at least suspend for a time, its late Ordinance.

But, in truth, the Convention comes now to a consideration of this subject, under a state of circumstances not anticipated by Virginia when she interposed her good offices to promote a peaceable adjustment of the controversy between this State and the Federal Government. There *has been made* that "combined and strenuous effort of the friends of peace and union, to effect an adjustment and conciliation" of this controversy—the result of which South Carolina was requested and expected to await—and that effort, it is hoped, will prove successful. The recent act of Congress, "to modify the act of the 14th July, 1832, and all other acts imposing duties on imports," is such a modification of the tariff laws as (I trust) will leave little room for hesitation on the part of the Convention of the People of South Carolina, as to the wisdom and propriety of rescinding its Ordinance.

Forbearing, therefore, to enter at large into the many and forcible considerations of justice and policy, which, independently of this measure of Congress, might, I humbly conceive, have sufficed to induce the Convention to suspend, if not to rescind the Ordinance, I shall rest in the hope, that the wisdom of the Convention will adopt, at once, the course which the dignity and patriotism of South Carolina, her attachment to the Union, so constantly expressed, and manifested by her deeds, her duty to herself and towards her sister States, and (I hope I may add, without presumption) her respect for the intercession of Virginia, shall dictate to be proper; and that that course will lead to a renewal of perfect harmony.

Sensible as I am, how little any effort of mine has or could have contributed to the result I now anticipate, I shall be well content with the honor of having been the bearer of the Resolutions of Virginia, and of a

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favorable answer to them—happy in being the humblest instrument of such a work.

I have the honor to be, with profound respect,
Your most obedient servant,
B. W. LEIGH.

To His Excellency ROBERT Y. HAYNE,
Governor of South Carolina.

[II.]

LETTER FROM THE GOVERNOR OF VIRGINIA TO THE GOVERNOR OF SOUTH CAROLINA.

VIRGINIA.
EXECUTIVE DEPARTMENT,
January 26, 1833.

To His Excellency,
ROBERT Y. HAYNE.

SIR—This will be delivered to you by the Hon. Benjamin Watkins Leigh, a distinguished citizen of Virginia, who has been elected by the General Assembly, a Commissioner of this State, to the State of South Carolina, in conformity to a Preamble and Resolutions on the subject of Federal Relations, this day adopted by the General Assembly of Virginia.

Mr. Leigh will make known to you any further views, that may be entertained, on the subject of the Preamble and Resolutions.

I have the honor to be,
With high consideration and respect,
Your Excellency's most obedient servant,
JOHN FLOYD.

[III.]

Certified copy of the Preamble and Resolutions, adopted by the Virginia Legislature, and transmitted, through their Commissioner, to the constituted Authorities of this State.

VIRGINIA, TO WIT:

I, JOHN FLOYD, Governor of the State aforesaid, do hereby certify and make known unto all whom it may concern, that GEORGE W. MUNFORD, whose name is subscribed to the certificate to the two documents hereunto annexed, marked A and B, is, as he there styles himself, Clerk of the House of Delegates, and Keeper of the Rolls of Virginia, duly appointed and qualified according to law; and to all his official acts as such, full faith, credit and authority, are had and ought to be given.

In Testimony whereof, I have subscribed my name, and caused the great seal of the State to be affixed hereunto.

[L. S.] Done at the City of Richmond, the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and thirty-three, and of the Commonwealth the fifty-seventh.

JOHN FLOYD.

By the Governor.

WM. H. RICHARDSON, *Secretary of the Commonwealth, and Keeper of the Seal.*

A.

Whereas, The General Assembly of Virginia, actuated by a desire to preserve the peace and harmony of our common country; relying upon the sense of justice of each and every State in the Union, as a sufficient pledge that their Representatives in Congress will so modify the acts laying duties and imposts on the importation of foreign commodities, commonly called the tariff acts, that they will no longer furnish cause of complaint to the people of any particular State; believing, accordingly, that the people of South Carolina are mistaken in supposing that Congress will yield them no relief from the pressure of those acts, especially as the auspi-

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cious approach of the extinguishment of the Public Debt affords a just ground for the indulgence of a contrary expectation; and confident that they are too strongly attached to the Union of the States, to resort to any proceedings which might dissolve or endanger it, whilst they have any fair hope of obtaining their object by more regular and peaceful measures; persuaded, also, that they will listen willingly and respectfully to the voice of Virginia, earnestly and affectionately requesting and entreating them to rescind or suspend their late Ordinance, and await the result of a combined and strenuous effort of the friends of Union and Peace, to effect an adjustment and reconciliation of all public differences now unhappily existing; regarding, moreover, an appeal to force, on the part of the General Government, or on the part of the Government of South Carolina, as a measure which nothing but extreme necessity could justify or excuse in either; but apprehensive, at the same time, that if the present state of things is allowed to continue, acts of violence will occur, which may lead to consequences that all would deplore—cannot but deem it a solemn duty to interpose, and mediate between the high contending parties, by the declaration of their opinions and wishes, which they trust that both will consider and respect. Therefore—

Resolved, By the General Assembly, in the name, and on behalf of the people of Virginia, that the competent Authorities of South Carolina be, and they are hereby earnestly and respectfully requested and entreated to rescind the Ordinance of the late Convention of that State, entitled "An Ordinance to Nullify certain acts of the Congress of the United States, purporting to be laws, laying duties and imposts on the importation of foreign commodities;" or, at least, to suspend its operation until the close of the first session of the next Congress.

Resolved, That the Congress of the United States be, and they are hereby earnestly and respectfully requested and entreated, so to modify the acts laying duties and imposts on the importation of foreign commodities, commonly called the Tariff Acts, as to effect a gradual but speedy reduction of the resulting Revenue of the General Government, to the standard of the necessary and proper expenditures for the support thereof.

Resolved, That the people of Virginia expect, and, in the opinion of the General Assembly, the people of the other States have a right to expect, that the General Government and the Government of South Carolina, and all persons acting under the authority of either, will carefully abstain from any and all acts, whatever, which may be calculated to disturb the tranquility of the country, or endanger the existence of the Union.

And, whereas, considering the opinions which have been advanced and maintained by the Convention of South Carolina, in its late Ordinance and Addresses, on the one hand, and by the President of the United States, in his Proclamation, bearing date the tenth day of December, one thousand eight hundred and thirty-two, on the other, the General Assembly deem it due to themselves, and the people whom they represent, to declare and make known their own views, in relation to some of the important and interesting questions which these papers present:—Therefore,

Resolved, By the General Assembly, That they continue to regard the doctrines of State Sovereignty and State Rights, as set forth in the Resolutions of 1798, and sustained by the Report thereon, of 1799, as a true interpretation of the Constitution of the United States, and of the powers therein given to the General Government; but that they do not

consider them as sanctioning the proceedings of South Carolina, indicated in her said Ordinance; nor as countenancing all the principles assumed by the President in his said Proclamation, many of which are in direct conflict with them.

Resolved, That this House will, by joint vote with the Senate, proceed, on this day, to elect a Commissioner, whose duty it shall be to proceed immediately to South Carolina, and communicate the foregoing Preamble and Resolutions to the Governor of that State, with a request that they be communicated to the Legislature of that State, or any Convention of its citizens, or give them such other direction as, in his judgment, may be best calculated to promote the objects which this Commonwealth has in view; and that the said Commissioner be authorized to express to the public authorities and people of our sister State, in such manner as he may deem most expedient, our sincere good will to our sister State, and our anxious solicitude that the kind and respectful recommendations we have addressed her, may lead to an accommodation of all the differences between that State and the General Government.

Resolved, That the Governor of the Commonwealth be, and he is hereby requested, to communicate the foregoing Preamble and Resolutions to the President of the United States, to the Governors of the other States, and to our Senators and Representatives in Congress.

Agreed to by the House, the twenty-sixth day of January, one thousand eight hundred and thirty-three.

GEORGE W. MUNFORD,

Clerk of the House of Delegates and Keeper of the Rolls of Virginia.

B.

IN THE HOUSE OF DELEGATES,
January 26, 1833.

The House of Delegates have, this day, by joint vote with the Senate, elected BENJAMIN WATKINS LEIGH, Esq. a Commissioner of this State, to the State of South Carolina, in conformity with a Preamble and Resolutions upon the subject of Federal Relations, also adopted to-day.

GEORGE W. MUNFORD,

Clerk of the House of Delegates and Keeper of the Rolls of Virginia.

[IV.]

CORRESPONDENCE BETWEEN THE COMMISSIONER OF VIRGINIA AND THE CONSTITUTED AUTHORITIES OF THIS STATE.

[Letter No. 1.]

CHARLESTON, February 5, 1833.

SIR:—When I had the honor, yesterday, of laying before your Excellency the Resolutions of the General Assembly of Virginia, of the 26th January last, and called your attention particularly to the Resolution of the General Assembly, in the name and on behalf of the people of Virginia, that the competent authorities of South Carolina be, and are hereby earnestly and respectfully requested and entreated to rescind the Ordinance of the State Convention of that State, entitled "An Ordinance to Nullify certain Acts of the Congress of the United States, purporting to be laws, laying duties and imposts on the importation of foreign commodities," or, at least, to suspend its operation until the close of the first session of the next Congress; you informed me that the only authority competent to comply with that request, or even to consider it, is the Convention of the people of South Carolina, which made the Ordinance, and the power of re-assembling the Convention is vested in the President of that body.

I have now, therefore, to request your Excellency to communicate the Resolutions of the General Assembly of Virginia, and this letter also, to the President of the Convention; confidently hoping that that officer will not refuse or hesitate to re-assemble the Convention, in order that the Resolutions of the General Assembly may be submitted to it, and that the Convention may consider, whether, and how far, the earnest and respectful request and entreaty of the General Assembly shall and ought to be complied with.

I have the honor to be, &c. &c.

B. W. LEIGH.

To his Excellency, ROBERT Y. HAYNE,
Governor of South Carolina.

[Letter No. 2.]

EXECUTIVE DEPARTMENT,
CHARLESTON, February 6, 1833.

SIR:—I have had the honor to receive your letter of the 5th instant, and in compliance with the request therein contained, communicated its contents, together with the Resolutions of the Legislature of Virginia, of which you are the bearer, to Gen. JAMES HAMILTON, Jr. the President of the Convention. I have, now, the pleasure of inclosing you his answer, by which you will perceive, that in compliance with the request conveyed through you, he will promptly re-assemble the Convention, to whom the Resolutions adopted by the Legislature of Virginia, will be submitted, and by whom they will doubtless receive the most friendly and respectful consideration. In giving you this information, it is due to the interest manifested by Virginia in the existing controversy between South Carolina and the Federal Government, to state that as soon as it came to be understood that the Legislature of Virginia had taken up the subject in a spirit of friendly interposition, and that a bill for the modification of the Tariff was actually before Congress, it was determined, by the common consent of our fellow-citizens, that no case should be made under our Ordinance until after the adjournment of the present Congress. The propriety of a still further suspension, can, of course, only be determined by the convention itself. With regard to the solicitude expressed by the Legislature of Virginia, that there should be "*no appeal to force*," on "the part of either the General Government or the Government of South Carolina, in the controversy now unhappily existing between them," and "that the General Government and the Government of South Carolina, and all persons acting under the authority of either, should carefully abstain from any and all acts, whatever, which may be calculated to disturb the tranquility of the country, or endanger the existence of the Union;" it is proper that I should distinctly and emphatically state, that no design now exists, or ever has existed, on the part of the Government of South Carolina, or any portion of the people, to "appeal to force," unless that measure should be rendered indispensable in repelling unlawful violence.

I beg leave to assure you, and, through you, the people of Virginia, and our other sister States, that no acts have been done, or are contemplated by South Carolina, her constituted authorities, or citizens, in reference to the present crisis, but such as are deemed measures of precaution. Her preparations are altogether defensive in their character; and notwithstanding the concentration of large naval and military forces in this harbor, and the adoption of other measures on the part of the General Government, which may be considered as of a character threatening the peace and endangering the tranquility and safety of the State, we shall continue to exercise the utmost possible forbearance, acting strictly on the defensive, firmly resolved to commit no act of violence, but prepared, as far as our means may extend, to resist aggression. Nothing, you may be assured, would give me, personally, and the peo-

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ple of South Carolina, more satisfaction, than that the existing controversy should be happily adjusted, on just and liberal terms; and I beg you to be assured, that nothing can be further from our desire, than to disturb the tranquility of the country, or endanger the existence of the Union.

Accept, Sir, for yourself, the assurance of the high consideration of yours respectfully and truly,

ROBERT Y. HAYNE.

To the Hon. B. W. LEIGH.

[Letter No. 3.]

CHARLESTON, February 6, 1833.

SIR:—I do myself the honor of acknowledging the receipt of your letter of the 5th, enclosing a copy of a communication you have received from *Benjamin Watkins Leigh, Esq.* Commissioner from the State of Virginia, covering certain Resolutions passed by the Legislature of that State, which that gentleman has been deputed to convey to the Executive of this State.

In reply to the reference which you have made to me, as President of the Convention of the People of South Carolina, consequent on the application on the part of that gentleman, for the meeting of that body, I beg leave to communicate to him, through your Excellency, that, appreciating very highly the kind disposition, and the patriotic solicitude, which have induced the highly respectable Commonwealth which he represents, to interpose her friendly and mediatorial offices in the unhappy controversy subsisting between the Federal Government and the State of South Carolina, I should do great injustice to those dispositions on her part, and, I am quite sure, to the feelings of the People of South Carolina, if I did not promptly comply with his wishes in reference to the proposed call.

You are, therefore, authorized to say to Mr. Leigh, that the Convention will be assembled with as much dispatch as may be compatible with the public convenience, and with a due regard to those circumstances which best promise a full consideration and final decision, on the proposition of which he is the bearer.

I have the honor to remain,
with distinguished consideration and esteem,
Your Excellency's obedient servant,

JAMES HAMILTON, Jr.
President of the Convention of the People of South Carolina.

To his Excellency, ROBERT Y. HAYNE.

REPORT.

The Committee, to whom was referred the communication of the Hon. B. W. Leigh, Commissioner from the State of Virginia, and all other matters connected with the subject, and the course which should be pursued by the Convention, at the present important crisis of our political affairs, beg leave to

REPORT:

(IN PART,)

That they have had under consideration, the act passed at the late session of Congress, to modify the "act of the 14th July, 1832, and all other acts imposing duties upon imports," and have duly deliberated on the course which it becomes the people of South Carolina to pursue at this interesting crisis in her political affairs. It is now upwards of ten years since the people and constituted authorities of this State, took ground against the *Protecting System*, as "unconstitutional, oppressive and unjust," and solemnly declared, in language which was then cordially responded to by the other Southern States, that it never could be submitted to "as the settled policy of the country." After remonstrating for years against this system in vain, and making every possible effort to procure a redress of the grievance, by invoking the protection of the Constitution, and by appealing to the justice of our Brethren, we saw, during the session of Congress which ended in July last, a modification effected avowedly as the final adjustment of the Tariff, to take effect after the complete extinguishment of the Public Debt, by which the Protecting System could only be considered as riveted upon the country forever. Believing that under these circumstances, there was no hope of any further reduction of the duties, from the ordinary action of the Federal Government, and convinced, that under the operation of this system, the labor and capital of the plantation States must be forever tributary to the manufacturing States, and that we should in effect, be reduced to a condition of colonial vassalage, South Carolina felt herself constrained, by a just regard for her own rights and interests, by her love of liberty and her devotion to the Constitution, to interpose in her sovereign capacity, for the purpose of arresting the progress of the evil, and maintaining, within her own limits, the authorities, rights and liberties, appertaining to her as a Sovereign State. *Ardently attached* to the *union of the States*, the people of South Carolina were still more devoted *to the rights of the States*, without which the Union itself would cease to be a blessing; and well convinced that the regulation of the whole labor and capital of this vast Confederacy by a great central Government, must lead inevitably to the total destruction of our free institutions, they did not hesitate to throw

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themselves fearlessly into the breach, to arrest the torrent of usurpation which was sweeping before it all that was truly valuable in our political system.

The effect of this interposition, if it has not equalled our wishes, has been beyond what existing circumstances would have authorized us to expect. The spectacle of a single State, unaided and alone, standing up for her rights—influenced by no other motive than a sincere desire to maintain the public liberty, and bring about a salutary reform in the administration of the Government, has roused the attention of the whole country, and has caused many to pause and reflect, who have heretofore seemed madly bent on the consummation of a scheme of policy absolutely fatal to the liberty of the people, and the prosperity of a large portion of the Union. Though reviled and slandered by those whose pecuniary or political interests stood in the way of a satisfactory adjustment of the controversy—deserted by many to whom she had a right to look for succour and support, and threatened with violence from abroad, and convulsions within, South Carolina, *conscious of the rectitude of her intentions, and the justice of her cause*, has stood unmoved; firmly resolved to maintain her liberties, or perish in the conflict. The result has been a beneficial modification of the Tariff of 1832, even before the time appointed for that act to go into effect, and within a few months after its enactment; accompanied by a provision *for a gradual reduction of the Duties to the Revenue Standard*. Though the reduction provided for by the Bill which has just passed, is, neither in its amount, nor the time when it is to go into effect, such as the South had a right to require, yet such an approach has been made towards the true principles on which the duties on imports ought to be adjusted under our system, that the people of South Carolina are willing so far to yield to the measure, as to agree that their Ordinance shall henceforth be considered as having no force or effect. Unequal and oppressive as the system of raising revenue by duties upon imports, must be upon the Agricultural States, which furnish more than two-thirds of the domestic exports of the United States, yét South Carolina always has been, and still is, willing to make large sacrifices to the peace and harmony of the Union. Though she believes that the Protecting System is founded in the assumption of powers not granted by the Constitution of the Federal Government, yet she has never insisted on such an immediate reduction of the duties as should involve the manufacturers in ruin. That a reduction to the lowest amount necessary to supply the wants of the Government, might be safely effected in four or five years, cannot, in our estimation, admit of a reasonable doubt; still, in a great struggle for *principles*, South Carolina would disdain to cavil about a small amount of duties, and a few years more or less in effecting the adjustment, provided only she can secure substantial justice, and obtain a distinct recognition of the principles for which she has so long contended. Among the provisions of the new Bill, which recommend it to our acceptance, are the establishment of a system of *ad valorem duties*, and the entire abandonment of the specific duties, and the *minimums*; tyrannical provisions, by which duties rated nominally at 25 per cent, were, in many cases, raised to upwards of 100 per cent; and by which the coarse and cheap articles, used by the poor, were taxed much higher than the expensive articles used by the rich; a regulation against which we have constantly protested in the most earnest terms, as unjust and odious. The reduction before the expiration of the present year of one tenth part of the excess of the duties over 20 per cent, on all articles "exceeding 20 per cent, on the value thereof," (embracing the entire mass

of the protected articles) and a gradual reduction thereafter, on such articles, down to 20 per cent, (the duties upon which, under the Tariff of 1832, range from 30 to upwards of 100 per cent, and average upwards of 50 per cent,) are great and manifest ameliorations of the system, to the benefits of which we cannot be insensible. But great as must be the advantages of these reductions, they are small in comparison with the distinct recognition, in the new Bill, of two great principles which we deem of inestimable value—*that the duties shall be eventually brought down to the Revenue Standard*, even if it should be found necessary to reduce the duties on the protected articles below 20 per cent, and that no more money shall be raised than shall be necessary to an economical administration of the Government.

These provisions embody great principles, in reference to this subject, for which South Carolina has long and earnestly contended; and if the pledge therein contained shall be fulfilled in good faith, they must, in their operation, arrest the abuses which have grown out of the unauthorized appropriations of the public money. We should consider the reduction of the revenue to the amount "necessary to the economical administration of the government," as one of the happiest reforms which could possibly take place in the practical operation of our system; as it would arrest the progress of corruption; limit the exercise of Executive patronage and power; restore the independence of the States; and put an end to all those questions of disputed power, against which we have constantly protested. It is this aspect of the question which has reconciled us to the provisions of the new Bill, (certainly not free from objections) which provide for the introduction of linens, silks, worsted, and a number of other articles, *free of duty*. The reduction of revenue which will thereby be effected, and the beneficial influence of a free trade, in several of those articles which are almost exclusively purchased by the agricultural staples of the Southern States, and which will furnish an advantageous exchange for these productions, to the amount of several millions of dollars annually, are considerations not to be overlooked. Nor can we be insensible to the benefit to be derived from the *united efforts of the whole South*, aided by other States having interests identified with our own, *in bringing about the late adjustment of the Tariff;* promising, we trust, for the future, that union of sentiment, and concert in action, which are necessary to secure the rights and interests of the Southern States. On the whole, in whatever aspect the question is contemplated, your Committee find, in the late modification of the Tariff, cause for congratulation. If we have not yet succeeded in the complete establishment of the great principles of free trade and constitutional liberty, such progress has been made towards the accomplishment of the former, as must serve to re-kindle our hopes, and to excite us to fresh exertions in the glorious work of reform in which we are engaged. Influenced by these views, the Committee is satisfied that it would not comport with the liberal feelings of the people of South Carolina, nor be consistent with the sincere desire by which they have always been animated, not only to live in harmony with their brethren, but to preserve the Union of the States, could they hesitate, under existing circumstances, in recommending that the Ordinance of Nullification, and the acts of the Legislature consequent thereon, be henceforth held and deemed of no force and effect. And they recommend the following Ordinance.

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AN ORDINANCE.

Whereas, the Congress of the United States, by an Act recently passed, has provided for such a reduction and modification of the duties upon foreign imports, as will ultimately reduce them to the Revenue Standard—and provides that no more Revenue shall be raised than may be necessary to defray the economical expenses of the Government.

It is therefore Ordained and Declared, That the Ordinance adopted by this Convention on the 24th day of November last, entitled "An Ordinance to Nullify certain acts of the Congress of the United States, purporting to be laws, laying duties on the importation of foreign commodities," and all acts passed by the General Assembly of this State, in pursuance thereof, be henceforth deemed and held to have no force or effect: *Provided*, That the act entitled "An act further to alter and amend the Militia Laws of this State," passed by the General Assembly of this State on the 20th day of December, 1832, shall remain in force, until it shall be repealed or modified by the Legislature.

Done at Columbia, the fifteenth day of March, in the Year of our Lord one thousand eight hundred and thirty-three, and in the fifty-seventh year of the Sovereignty and Independence of the United States of America.

ROBERT Y. HAYNE,
Delegate from the Parishes of St. Philip and St. Michael. } PRESIDENT OF THE CONVENTION.

ISAAC W. HAYNE, CLERK.

REPORT,

ON THE MEDIATION OF VIRGINIA.

The Committee to whom were referred the Resolutions of the General Assembly of Virginia, and the communication of MR. LEIGH *to the Governor of the State of South Carolina, beg leave to*

REPORT:

That, although circumstances have supervened, since the institution of this Commission on the part of the highly respected Commonwealth from which it proceeds, which have enabled this Convention to accomplish the object which her Assembly so anxiously and patriotically had in view, we are nevertheless sensible of the friendly dispositions and sympathy, which induced the interposition of her good offices, at a moment when South Carolina, denounced by the Executive of the Federal Government, and threatened with the extremity of its vengeance, stood absolutely alone in the contest she was waging for the rights of the States and the Constitutional liberties of the country.

To this interference and these friendly dispositions, South Carolina desires to respond, as a sister, sovereign, and independent Commonwealth, in a tone of candor, confidence and affection. Appreciating thus sensibly, both the motive and objects which influenced the General Assembly of Virginia, to despatch, at a moment so interesting, her Commissioner to this State, whose mission, even if the recent modification of the Tariff had not been adopted, would have challenged her high respect and profound consideration, she cannot permit the occasion thus offered, to pass, without making a few declarations which she regards as due to herself and the public liberty of the country.

In the first place, South Carolina desires to stand acquitted, and believes, on a calm and dispassionate reflection by her co-States, she must stand acquitted, of the charge of having acted with any undue precipitation, in the controversy hitherto pending with the General Government. For ten years she petitioned, protested and remonstrated, against that system of unjust and unconstitutional Legislation, which had equally received the reprobation of Virginia, before she resorted to her veto to forbid its enforcement within her limits. In exercising this faculty of her sovereignty, she believed she rested on those doctrines which, in 1798 and 1799, had conferred on Virginia and her distinguished statesmen a renown so unfading. She now refers to this subject in no invidious spirit of controversy; but when Virginia asserted, in those memorable Resolutions of her General Assembly, "that she viewed the powers of the Federal Government as resulting from the compact to which the States are parties; as limited by the plain sense and intention of the

instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable and dangerous exercise of other powers, not granted by said compact, the States, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights and liberties, appertaining to them"—we conceived she had done nothing more or less, than announce the remedy which South Carolina has resorted to, through her State interposition. It is moreover asserted, in the Report explanatory of those Resolutions, that this right is a Constitutional, and not a Revolutionary right; and by the whole context of the powerful argument embraced in that Report, the right itself stands forth as separate and independent of the ordinary remedies of procuring a redress for the ordinary abuses of the Federal Government.

When, therefore, the General Assembly of Virginia, in the recent Resolutions, borne by her Commissioner, which your Committee are now considering, declares "that she does not regard the Resolutions of 1798 and '99, as sanctioning the proceedings of South Carolina, as indicated in the ordinance of her Convention," with all proper deference, South Carolina must, nevertheless, adhere, with an honest and abiding confidence, to her own construction. It is within the providence of God that great truths should be independent of the human agents that promulgate them. Once announced, they become the subjects and property of reason, to all men and in all time to come. Nor will South Carolina feel less confidence in the conservative character of her remedy, which she believes to be in perfect harmony with a true exposition of the doctrines of the Resolutions of 1798. by the recent testimony afforded of its efficacy, in a pacific accommodation of the late controversy with the Federal Government, although that Government has attempted to destroy the authority and efficacy of this remedy, by the contemporary passage of an act, perpetrating a worse and more aggravated outrage on the Constitution, which has again demanded the interposition of this Convention.

With this brief justification of the principles of South Carolina, your Committee take leave of the Subject; assuring the ancient and distinguished Commonwealth, whose mission has been borne, by her Commissioner, with an ability, temper and affection, entirely corresponding with her own dispositions, that in the struggles for liberty and right which we apprehend from the antagonist principles, now fearfully at work, between those who support a limited and economical system of Government, and those who favor a consolidated and extravapant one, which the States in a minority are destined to wage, she will find, in South Carolina, a faithful and devoted ally, in accomplishing the great work of Freedom and Union. If she cannot say, with Virginia, that consolidation and disunion are equivalent evils, because she believes, with their own Jefferson, that consolidation is the greatest of all political curses to which our Federative form of Government can have any possible tendency; she, nevertheless, affirms, and challenges the production of any event in her history to disprove the declaration, that she is devoted to the union of these States, on the very terms and conditions of that compact out of which the Union had its origin; and for these principles she is prepared to peril, at all times and under all circumstances, the lives and fortunes of her people.

Your Committee conclude, by recommending the adoption of the following Resolutions:

Resolved unanimously, That the President of this Convention do communicate to the Governor of Virginia, with a copy of this Report and these Resolutions, our distinguished sense of the patriotic and friendly motives which actuated her General Assembly, in tendering her mediation, in the late controversy between the General Government and the State of South Carolina; with the assurance that her friendly councils will at all times command our respectful consideration.

Resolved unanimously, That the President of this Convention likewise convey to the Governor of Virginia, our high appreciation of the able and concilliatory manner in which Mr. LEIGH has conducted his mission, during which he has afforded the most gratifying satisfaction to all parties, in sustaining, towards us, the kind and fraternal relations of his own State.

CONVENTION DOCUMENTS. 1833.

REPORT.

The Committee, to whom was referred the act of the Congress of the United States, entitled "An Act further to provide for the collection of duties on imports," beg leave to

REPORT,

That they have, so far as time would allow, considered the Act with such attention as the importance of the matters contained in it would seem to require. At the present moment, when a question, which has long divided and perplexed the country, has been adjusted, on terms calculated to quiet agitation and restore harmony, it would have been matter of peculiar gratification, to be able to indulge, without restraint, the feelings which such adjustment was calculated to excite. But your Committee regret to say, that at the moment of returning peace, the most serious and alarming cause of dissatisfaction has been offered by the Act under consideration. Your Committee do most solemnly believe that the principles sought to be established by the Act, are calculated, when carried into practice, to destroy our Constitutional frame of Government, to subvert the public liberty, and to bring about the utter ruin and debasement of the Southern States of this Confederacy.

The general purpose of the whole act, though not expressed in the terms of it, is perfectly well known to have been to counteract and render inefficacious an act of this State, adopted in her sovereign capacity, for the protection of her reserved rights. Believing, as we most fully do, that the power attempted to be exercised by the State, is among the reserved powers of the States, and that it may be exercised consistently with the Constitution of the United States, an opinion formed by the good people of this State, upon the fullest and most careful consideration, and expressed through their Delegates in Convention, your Committee must on that ground alone, have been convinced that the purpose of counteracting that act, and the means by which it is sought to be counteracted, are unauthorized by the Constitution. We think that this will become more apparent by attending to the leading provisions of the Act of Congress.

The Act gives the President of the United States, for a limited time, an almost unlimited power of controul over the commerce of the whole United States; though certainly the power was only contemplated to be exercised against that of South Carolina.

It exempts property is the hands of the officer of the Revenue, alleged to be detained for enforcing the payment of duties, from liability to the process of the State Courts.

It exempts a class of persons, residing within a State—officers of the

United States, and persons employed by them, or acting under their direction, or any other person professing to act in execution of the Revenue Laws—from all responsibility to the State laws or State tribunals, for any crime or wrong, when it is alleged that the act was done in execution of the Revenue Laws or under color thereof.

It gives to the same class of persons, the right to seek redress for any alleged injury whatever, either to person or property, however foreign to the proper subjects of their jurisdiction, in the Courts of the United States; provided the injury be received in consequence of any act done in execution of the Revenue Laws.

It directly supposes all the Courts of the State, to be inferior and subordinate to those of the United States, and provides for rendering them so, by directing to them the writ of *certiorari* superceding their jurisdiction.

It affects to limit and controul the jurisdiction of the Courts of the State; providing for the removal of causes from their cognizance; declaring their judgments void, and providing for the discharge of persons confined under their process.

It tyrannically provides for rendering persons liable to punishment for acts done by them in execution of the laws of the State and the process of its Courts, to which they are bound to yield obedience, and which they are compelled, under the highest sanctions, to enforce.

It not only provides for the punishment of persons thus acting, by the civil tribunals, but authorizes the employment of military force, under color of executing the laws of the United States, to resist the execution of the laws of the State; superceding, with the quick execution of the Sword, the slower process of Courts.

The act authorizes the confinement of persons in unusual places—which can only mean on board ships—in which persons from the most remote parts of the State may be confined.

The Committee believe that all these positions are distinctly sustained by the Act in question. By the Constitution of the United States, the power to regulate commerce, is given to Congress. It is an important portion of the Legislative power, and, as Legislative power, is incapable of delegation. Congress has, however, in effect delegated to the President the power to abolish, at his discretion, any port of the United States, or interrupt or destroy its commerce. This may easily be effected, under the authority to remove the custom house to any port or harbor within the Collection District, by fixing it at inconvenient or inaccessible places. To say nothing of the unusual and tremendous character of this power, which New York or Philadelphia might perhaps apprehend, if there were any expectation of its being exercised with respect to them, and the enormous abuse to which it is liable, does the Constitution contemplate or authorize the delegation of this discretion to an individual? If it were exercised, it would be a plain violation of that part of the Constitution which directs that, in regulations of commerce, no preference shall be given to the ports of one State over those of another. The same inequality is occasioned by directing the payment of Cash Duties. It is vain to say that this has been rendered necessary by the act of the State, and without it the collection of revenue would be impracticable. Whatever latitude may be allowed in the selection of means necessary and proper to carry into effect the granted powers of Congress, we believe no one has yet imagined, that a plain provision of the Constitution may be violated, as a means of carrying into effect a power granted by another provision. Although we may concede the power of Congress, for sufficient cause and in good faith,

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to abolish one port of entry and establish another, yet we, of course, cannot concede that it may delegate this power; or, that the sovereign act of the State, for the vindication of her reserved rights, constitutes sufficient cause, or that this act has been done in good faith.

The provision of the Act, that all property in the hands of any officer or other person, detained under any revenue Law, shall be subject only to the orders and decrees of the Courts of the United States, plainly enacts, that it shall not be subject to any process, order or decree of the Courts of the State. We have heretofore been accustomed to regard our Superior Courts as having jurisdiction over all persons and all property within the limits of the State. This jurisdiction is, of course, superceded, whenever any other Court of concurrent jurisdiction has possession or custody of any cause or any property. But that a ministerial, executive officer, or that property in his hands, should be exempted from the jurisdiction and authority of State Courts, we believe to be unprecedented in our legislation, and without any shadow of Constitutional authority.

One of the most extraordinary and exceptionable provisions of the Act, appears to be that authorizing the removal, previous to trial, of suits or prosecutions from the State Courts, upon affidavit made, and a certificate of the opinion of some counsellor or attorney to the same effect, that the suit or prosecution was for, or on account of any act done under the Revenue Laws of the United States, or under color thereof, or for, or on account of any right, authority or title, set up or claimed by any officer or other person, under any such law of the United States. If there be any violation of the law of the State—if there be a wrong done to person or property within the limits of the State—have not the Courts of the State jurisdiction of that matter? By what authority does the Congress of the United States limit that jurisdiction? What shadow of Constitutional provision is there to sanction this most flagrant usurpation? True, such a violation of the law of the State may, sometimes, be justified, as being done in execution of a Constitutional law of the United States; but this is a matter of defence, to be tried as every other defence is to be tried, and can have no effect in ousting the jurisdiction, or in giving the Courts of the United States original jurisdiction of offences against the State laws. So any person is authorized to bring suit in the Courts of the United States, for any injury to person or property, for, or on account of any act done in execution of the Revenue Laws. The Constitution gives to the Courts of the United States, jurisdiction of all cases in law and equity *arising under the Constitution and laws of the United States.* An assault on the person or trespass to property, is a violation of the laws of the State. Can it make a difference, that a violation of the State law was provoked by an act done under color of executing the law of the United States? The protection of persons and property has, heretofore, been supposed the province of the States. In assuming to itself this new function, the Federal Government indicates most clearly its tendency to engross all power, and controul all State authority.

It is plain, likewise, from the various provisions of the Act, that such suits are intended to be allowed against persons acting in execution of the process of the State Courts. Judgments of those Courts are declared to be void, and persons and property exempted from their jurisdiction.

It is not only our law but part of the law of the civilized world, that the judgment of a Court of competent jurisdiction is valid, until it be reversed by a competent authority. The judgment of a Superior Court of

general jurisdiction can never be void for want of jurisdiction. When there are Courts of concurrent jurisdiction, that which obtains possession of the cause is entitled to retain it; its process must be respected, and all other jurisdiction is excluded. It is true, that the judgments of Courts of limited jurisdiction (and such are the Courts of the United States, and so they themselves have determined) are void, if the jurisdiction be transcended. This distinction would seem to determine whether sovereignty is to be attributed to the State or to the Federal authority. Hitherto, it has never occurred to any one to doubt that an officer, acting in execution of the process of a Court of general jurisdiction, and all persons acting under his direction, are exempted from all responsibility for that act. He is bound under the highest sanction, to execute that process; and shall he be punished for performing his duty?

If this act were submitted to, the entire administration of the criminal justice of the State might be interrupted; and it is not too much to say, that the State Governments would be rendered impracticable. The worst criminal—one stained with the guilt of murder—upon making an affidavit which no such criminal would hesitate to make, and procuring a certificate which any criminal might easily procure, would be able to elude the criminal justice of the State. His cause must be removed to the Federal Court; and when, upon his trial, it shall appear that his act was not done in execution of the law of the United States, your Committee do not perceive what other consequence can follow, than that he must be acquitted and go with impunity.

Having taken this view of the provisions of the act in question, the Committee would submit to the solemn consideration and determination of this Convention, whether they do not effect an entire change in the character of our Constitution, and will not, when carried into practice, abolish every vestige of liberty, and render this an absolute Consolidated Government, without limitation of powers. It has been truly said, that if these things may be done, the most solemn acts of the highest authorities of the State may be regarded as the unauthorized proceedings of individuals; the Courts of justice may be shut up; the Legislature dispersed, as a lawless mob; and we, ourselves, representing, as we vainly believe, the sovereignty of the State, called to answer for what we have said and done on this floor, at the bar of a Circuit Court of the United States. Is this an exaggerated picture? Let us examine it a little more closely. If these provisions may be made to enforce the execution of the Revenue Laws of the United States, they may be made to enforce any other Act which Congress shall think proper to pass. No matter how oppressive, how clearly unconstitutional, there is no power in the constituted authorities of the State to resist it. If one class of cases may be removed from the jurisdiction of the State Courts, any other class, subject only to the discretion of Congress, may be likewise removed. If the process of the Courts be void, and the officer executing it, and those acting under his direction, responsible civilly, or punishable criminally, the Judge who directed the process must be answerable in like manner. He was equally without authority, and having commanded the act, is a partaker of the guilt. The Legislature who commanded the act of the Judge, and the Convention of the people in obedience to whose mandate every thing was done, must have the same participation. If the sheriff and his *posse*, obstructing the execution of the Revenue Laws, may constitute that unlawful combination and assemblage, on being notified of which the President is authorized to use the military force of the United States to disperse them, then the Courts, the Legislature,

or the Convention, in obedience to whose authority alone the sheriff acts, and who are the efficient causes of the obstruction, are assemblages of similar character, and may be dispersed by military force. The whole purpose of the Act is to confound the acts of the constituted authorities of the State, however solemn and well considered, with the lawless and irregular acts of individuals or mobs. The certain effect of it must be, to restrain the States from the exercise of any other authority than such as Congress, or the sectional majority represented in Congress, shall think fit to permit them to exercise; and to ensure the enforcement of every law which that majority may think proper to enact. It involves the cruelty and absurdity of making the community responsible to hostile force for its acts as a community, and the individuals of the community punishable for their acts in obedience to the laws of their Government; an obedience from which they cannot exempt themselves, unless they absolve themselves from their allegiance, by self-banishment.

That the object of many of the politicians who supported this bill—the politicians of that majority in whose hands all power will be—is to establish a Consolidated Government, is now hardly at all disguised. The chimera of a Government partly consolidated, partly federative, is now scarcely contended for. The same class of politicians have always had in view the same object. It was attempted to be effected in the Convention which framed the Constitution of the United States. The attempt was there foiled. After the formation of the Government, those who affected Consolidation, assumed the term of "Federal," and denied that the opinions held by them led to that result. The possession of power, however, developed their views, and the first marked indication of their disposition to engross the powers of the States, and meddle with their internal concerns, was afforded by the Alien and Sedition Laws. This attempt was so strongly rebuked by public opinion, which led to the change of administration in 1800, that the hopes of Consolidation seemed abandoned forever. They remained dormant, until revived by the agitations springing out of our late Protecting System. It was perceived that nothing less strong than a Consolidated Government could sustain that system of iniquity. Gradually, we have been told that the States have parted with a portion of their sovereignty; then, that they were never sovereign; until at length, availing themselves of the excitement of a particular crisis, and passion for power, and the influence of an individual, the act before us has been passed, sweeping away every vestige of State Sovereignty and Reserved Rights, or causing them to be held at the mercy of the majority; compared to which, the Alien and Sedition Laws sink into measures harmless and insignificant.

And what is it to the Southern States, to be subjected to a Consolidated Government? These States constitute a minority, and are likely to do so forever. They differ in institutions and modes of industry, from the States of the majority, and have different, and in some degree, incompatible interests. It is to be governed, not with reference to their own interests or according to their own habits and feelings, but with reference to the interests, and according to the prejudices of their rulers, the majority. It has been truly said that the Protecting System constitutes but a small part of our controversy with the Federal Government. Unless we can obtain the recognition of some effectual Constitutional check on the usurpation of power, which can only be derived from the Sovereignty of the States, and their right to interpose for the preservation of their reserved powers, we shall experience oppression more cruel and revolting than this.

While there remains within the States any spirit of liberty, prompting them to repel Federal usurpations, one of the most obvious means to break that spirit and reduce the States to subjection, will be that which has been attempted by the Act before us. It will be to create or to sustain, by the patronage of Government or other means, a party within the State, devoted to Federal power, exempted from responsibility to the State authorities, and having power to harass and degrade the State authorities, by means of the tribunals of the United States. Thus will be created a Government within a Government, with all the consequences, which experience informs us, are likely to arise from that state of things, and such as did arise from the independent ecclesiastical jurisdictions established within the Governments of Europe. The Federal Government will interfere with every department of the State Governments; it will influence elections; it will raise up and put down parties, as they shall be more servile to its will. Pretexts for interference will never be wanting. Already has it been said, that ours is no longer a Republican Government, because the State, in vindicating its Sovereignty, has refused to entrust with any portion of its authority, those who deny or refuse to recognize that Sovereignty. Other classes of individuals might be found, within the State, whom it might suit the majority to suppose disfranchised, in derogation of true republican principles, and to require their interference and protection. This interference will be practiced at first with moderation, and with some apparent respect for the rights of the States. Gradually, as the power of the Government shall be established, and the Southern States become weakened and less capable of resistance, the show of moderation will be thrown off. Thus the peace of those States will be embroiled; their prosperity interrupted, their character degraded; until in the natural progress of things, your Committee think it not too strong to say, that they will be more miserable, more utterly enslaved, more thoroughly debased, than any provinces that have ever been rendered subject by the sword.

In alluding to the oath, which the State has heretofore thought proper to exact of its citizens, and to one somewhat similar, which the Committee propose to recommend, they think proper to disclaim, as they do most solemnly disclaim, on behalf of themselves and the Convention, that this or any other measure which the Convention has adopted, has been adopted upon mere party views, to secure party ascendancy, or gratify party resentment. They appeal to God, that their only object has been to vindicate their just rights and liberties, and the common liberties of the whole South. This object they have pursued in singleness of purpose; though exposed to much obloquy—threatened with much danger, and discountenanced by those from whom they had a right to expect support. They have never sought to endanger this Union; but to perpetuate it by rendering it compatible with, and a security for liberty.

The firmness of the State seems, at length, in some degree, to have triumphed. But let it be recollected that the moment of triumph is commonly one of danger. Let it be kept in mind, that this is not a contest ended, but a contest not more than begun, and not to be determined till this Act shall cease to disgrace the Statute Book. Let this contest be carried on firmly, steadily, without passion and without faultering. If the vigilance of the State should relax; if it should cease to raise up barriers against the head of usurpation, which threatens to overwhelm us, the torrent will break loose, and sweep our liberties along with it. Let every man consider this his own peculiar business. If liberty be saved, every thing is saved: if liberty be lost, every thing is lost.

As the provisions of the Act have reference only to certain Acts of the People and Legislature of this State, which have been superceded by the late modification of the Tariff, it could not have been contemplated that it should have any immediate operation. And your Committee doubted whether, regarding it as merely a menace, they should recommend any action upon it, or only that the sentiments of the Convention should be expressed, in regard to the principles it contains. But most of its provisions are made permanent, and may be put in practice on some future occasion. The Committee cannot doubt that it expresses the true principles of many of those who voted for it, and who will seek occasion to reduce them to practice. As a precedent, it is most dangerous. The vote on the very Act, shows how little is to be expected from a majority. It is incumbent on South Carolina, unsupported as she is, to take care that no Federal authority, unauthorized by our Federal Compact, shall be exercised within the limits of the State. For the purpose of providing that the act shall never have operation or effect, within the limits of the State, the Committee beg leave to report the following Ordinance.

AN ORDINANCE,

To Nullify an Act of the Congress of the United States, entitled "An Act further to provide for the Collection of Duties on Imports," commonly called the Force Bill.

We, the People of the State of South Carolina in Convention assembled, do *Declare and Ordain*, that the Act of the Congress of the United States, entitled "An Act further to provide for the collection of duties on imports," approved the 2d day of March, 1833, is unauthorized by the Constitution of the United States, subversive of that Constitution, and destructive of public liberty; and that the same is, and shall be deemed, null and void, within the limits of this State; and it shall be the duty of the Legislature, at such time as they may deem expedient, to adopt such measures and pass such acts as may be necessary to prevent the enforcement thereof, and to inflict proper penalties on any person who shall do any act in execution or enforcement of the same within the limits of this State.

We do further Ordain and Declare, That the allegiance of the citizens of this State, while they continue such, is due to the said State; and that obedience only, and not allegiance, is due by them to any other power or authority, to whom a controul over them has been, or may be delegated by the State; and the General Assembly of the said State is hereby

empowered, from time to time, when they may deem it proper, to provide for the administration to the citizens and officers of the State, or such of the said officers as they may think fit, of suitable oaths or affirmations, binding them to the observance of such allegiance, and abjuring all other allegiance; and, also, to define what shall amount to a violation of their allegiance, and to provide the proper punishment for such violation.

Done in Convention, at Columbia, the eighteenth day of March, in the year of our Lord one thousand eight hundred and thirty-three, and in the fifty-seventh year of the Sovereignty and Independence of the United States of America.

ROBERT Y. HAYNE, Delegate from the Parishes of St. Philip and St. Michael. } PRESIDENT OF THE CONVENTION.

ISAAC W. HAYNE, CLERK.

AN ACT

To modify the act of the fourteenth of July, one thousand eight hundred and thirty-two, and all other acts imposing duties on imports.

After Dec. 31, 1833, all duties exceeding 20 per cent, to be reduced by biennially striking off one tenth of the excess, &c.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congtess assembled*, That from and after the thirty-first day of December, one thousand eight hundred and thirty-three, in all cases where duties are imposed on foreign imports by the act of the fourteenth day of July, one thousand eight hundred and thirty two, entitled "An act to alter and amend the several acts imposing duties on imports," or by any other act, shall exceed twenty per centum on the value thereof, one tenth part of such excess shall be deducted; from and after the thirty-first day of December, one thousand eight hundred and thirty-five, another tenth part thereof shall be deducted; from and after the thirty-first day of December, one thousand eight hundred and thirty-seven, another tenth part thereof shall be deducted; from and after the thirty-first day of December, one thousand eight hundred and thirty-nine, another tenth part theref shall be deducted; from and after the thirty-first day of December, one thousand eight hundred and forty-one, one half of the residue of such excess shall be deducted; and from and after the thirtieth day of June, one thousand eight hundred and forty-two, the other half thereof shall be deducted.

Duty on plains, kerseys, &c. raised to 50 per cent.

SEC. 2. *And be it further enacted*, That so much of the second section of the act of the fourteenth of July aforesaid, as fixes the rate of duty on all milled and fulled cloth, known by the names of plains, kerseys, or kendal cottons, of which wool is the only material, the value whereof does not exceed thirty-five cents a square yard, at five

per centum ad valorem, shall be and the same is hereby, repealed. And the said articles shall be subject to the same duty of fifty per centum, as is provided by the said second section for other manufactures of wool; which duty shall be liable to the same deductions as are prescribed by the first Section of this act.

After, &c. duties to be paid in cash, &c.

Goods to be valued at ports of entry.

SEC. 3. *And be it further enacted*, That, until the thirtieth day of June, one thousand eight hundred and forty-two, the duties imposed by existing laws, as modified by this act, shall remain and continue to be collected. And from and after the day last aforesaid, all duties upon imports shall be collected in ready money; and all credits now allowed by law, in the payment of duties, shall be, and hereby are abolished; and such duties shall be laid for the purpose of raising such revenue as may be necessary to an economical administration of the Government; and from and after the day last aforesaid, the duties required to be paid by law on goods, wares and Merchandize, shall be assessed upon the value thereof, at the port where the same shall be entered, under such regulations as may be prescribed by law.

Articles to be free after Dec. 31, 1833.

SEC. 4. *And be it further enacted*, That, in addition to the articles now exempt by the act of the fourteenth of July, one thousand eight hundred and thirty-two, and the existing laws, from the payment of duties, the following articles imported from and after the thirty-first day of December, one thousand eight hundred and *thirty-three*, and until the thirtieth day of June, one thousand eight hundred and forty-two, shall also (be) admitted to entry free from duty, *to* wit: bleached and unbleached linens, table linen, linen napkins and linen cambrics, and worsted stuff goods, shawls, and other manufactures of silk and worsted, manufactures of silk, or of which *silk* shall be the component material of chief value, coming from this side of the Cape of Good Hope, except sewing silk.

Articles to be free after June 30, 1842.

Duty after June 30, 1842, on certain classes of articles.

SEC. 5. *And be it further enacted*, That from and after the said thirtieth day of June, one thousand eight hundred and forty-two, the following articles shall be admitted to entry, free from duty, to wit: indigo, quicksilver, sulphur, crude salt petre, grind stones, refined borax, emory, opium, tin in plates and sheets, gum Arabic, *gum* Senegal, lac dye, madder, madder root, nuts and berries used in dyeing, saffron, tumeric, woad or pastel, aloes, ambergris, Burgundy pitch, cochineal, camomile flowers, coriander seed, catsup, chalk, coculus indicus, horn plates for lanterns, ox horns, other horns and tips, India rubber, manufactured ivory, juniper berries, musk, nuts of all kinds, oil of juniper, unmanufactured rattans and reeds, tortoise shell, tin foil, shellac, vegatables used principally in dyeing and composing dyes, *weld*, and all articles employed chiefly for dyeiny, except allum, coperas, bichromate of potash, prussiate of potash, chromate of potash, and nitrate of lead, aqua fortis, and tartaric acids. And all imports on which the first section of this act may operate, and all articles now admitted to entry* from duty, or paying a less rate of duty than *twenty* per centum ad valorem, before the said thirtieth day of June, one thousand eight hundred and forty two, from and after that day may be admitted to entry, subject to such duty, not exceeding twenty per centum ad valorem, as shall be provided for by law.

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*Quere, if the word *free* be not omitted.

SEC. 6. *And be it further enacted*, That so much of the act of the fourteenth day of July, one thousand eight hundred and thirty-two, or of any other act, as is inconsistent with this act, shall be, and the same is hereby, repealed: *Provided*, That nothing herein contained shall be so construed as to prevent the passage, prior or subsequent to the said thirtieth day of June, one thousand eight hundred and forty-two, of any act or acts, from time to time, that may be necessary to detect, prevent, or punish evasions of the duties on imports imposed by law, nor to prevent the passage of any act, prior to the thirtieth day of June, one thousand eight hundred and forty-two, in the contingency either of excess or deficiency of revenue, altering the rates of duties on articles which, by the aforesaid act of fourteenth day of July, one thousand eight hundred and thirty two, are subject to a less rate of duty than twenty per centum ad valorem, in such manner as not to exceed that rate, and so as to adjust the revenue to either of the said contingencies.

All acts, &c. inconsistent &c. repealed.

Proviso.

[*Approved, March* 2, 1833.]

NOTE.

The proceedings of South Carolina in opposition to a protecting Tariff, and the threatened measures of Government in retaliation, seemed likely to produce a dissolution of the Union by the secession of South Carolina, which would probably have been followed by a similar movement in the other Anti Tariff States in the South. Mr. Henry Clay of Kentucky, a strenuous advocate for the protecting system, proposed a compromise, to which, for the sake of peace, South Carolina acceded: not renouncing her rights or her principles, but not refusing to meet half way, the advocates of opposing interests. Mr. Clay introduced into Congress the preceding act, known by the name of Mr. Clay's compromising law; which I insert here as a proper close to the history of this dispute. I hope and trust, that it will prove in fact, what it was intended to be, a full and final settlement of the Tariff Contest; a contest which adds one to the many proofs that a Tariff is a bad mode of raising a revenue, and that a custom house is a nuisance, and a war-breeder, both at home and abroad.

The FORCE BILL, (passed 2nd March, 1833) claiming the right of coercing into obedience and submission by hostile armament, any State that should deem it necessary to oppose an act of manifest usurpation, still remains among the Laws of Congress, a disgrace to that body and to every man who gave his voice in its favour. Whatever binding force this act of despotism may have in Congress, it has none in South Carolina.

Of the preceding documents relating to the Convention, extracted from the Journals of its two sessions, the first Report is said to have been written by Gen. R. Y. Hayne—the Address to the People of South Carolina, by R. J. Turnbull, Esq.—the Address to the People of the United States, by the Hon. George M'Duffie—the Report on the mediation of Virginia, by Gen. James Hamilton—the Report on the Force Bill, by Judge Wm. Harper. ED.

DOCUMENTS, MEMORANDA, AND ACTS OF ASSEMBLY, RELATING TO THE BOUNDARY LINE.

Preliminary Notices.

The Act of the Legislature of South Carolina of 15th Dec. 1815, seems to have put an end to the long continued dispute between the two States of South and North Carolina on this subject. But mistakes may still arise among the occupants of land on the frontier, as to the course and direction of that line, in particular places; and reference is desirable to the documents of survey: the whole dispute, also, constitutes a part of the legislative history of South Carolina. I have therefore deemed it not useless to collect the documents and memoranda relating to this long contested boundary, and to insert a list of such as remain, that they may be referred to and consulted, should some future occasion call for them.

Ed.

Extract from Governor Drayton's View of South Carolina, 1802, *page* 3. *Situation of the State. See also*, 1 *Ramsay's Hist. S. C. p.* 28.

"South Carolina is situated in North America, between thirty-two degrees, and thirty-five degrees eight minutes of North Latitude, and between one degree twenty-four minutes, and six degrees ten minutes West Longitude from *Washington*, the seat of government of the United States of America.

It is bounded Northwardly by a line commencing at a Cedar Stake marked with nine notches, on the shore of the Atlantic ocean, near the mouth of Little River, thence pursuing by many traverses a course, West, Northwest, until it arrives at a point of intersection in the Apalechean Mountains. From thence due South until it strikes Chatuga, the most Northern branch or stream of Tugoloo river. Thence along the said River Tugoloo, to it confluence with the River Keowee. Thence along the River Savannah until it intersects the Atlantic ocean, by its most Northern mouth. Thence North-eastwardly along the Atlantic ocean, (including the Islands) until it intersects the Northern boundary near the entrance of Little River. These boundaries include an area, somewhat

triangular, of about twenty-four thousand and eighty square miles; whereof nine thousand five hundred and seventy lie above the falls of the rivers, and fourteen thousand five hundred and ten are between the falls and the Atlantic ocean. Hence, North Carolina stretches along her North-eastern and Northern frontier; Tennessee along her North-western; and Georgia along her Southern frontier.

By what authority.

The authorities from whence these boundaries arise, are—

1st. The ancient charters from the Crown of Great Britain.

2d. Their resumption by, and surrender to, the Crown of Great Britain.

3d. The Treaty of Paris in 1763.

4th. The royal instructions to the Governors of South and North Carolina, by whom Commissioners were appointed, who ran the boundary line between those States in the years 1764 and 1772.

5th. The definitive treaty of peace between the United States of America, and his Britannic Majesty, done at Paris in the year 1783.

6th. By the settlement of Boundary between South Carolina and Georgia, done at Beaufort, by Commissioners duly appointed from either State for that purpose.

7th. By cession of the Western territory of the State towards the Mississippi to the United States of America, in pursuance of an Act of the Legislature of the State passed for that purpose in the year 1787.

8th. By Indian Treaties."

The "Ancient Charters" above alluded to by Governor Drayton, he has enumerated in the following note to page 3, viz—

"The first Charter that appears to have been granted for North America including any part of South Carolina, was by Queen Elizabeth to Sir Humphrey Gilbert, dated the 11th of June, 1576. See *Stith's* History of Virginia, p. 4.

In the year 1584, another Charter was given by Queen Elizabeth to Mr. Raleigh, afterwards Sir Walter. *Anderson's History of Commerce*, vol. 2, p. 157, 158.

In 1606 King James the first granted another Charter, including a part of South Carolina, to Sir Thomas Gates and others: and in 1612 by another Charter he extended the privileges of that Company. See *Stith's History of Virginia*, p. 329, as also the above Charters in the Appendix at the end of that Book."

The Province of Carolina, including originally the territory now called the States of North and South Carolina, was granted to eight Proprietors, as may be seen in the two Charters of Charles the Second, already herein inserted. On the 25th of July, 1729, seven of the eight Proprietors surrendered to the King, under the authority of an Act of Parliament, 2d George 2d, Ch. 34, also inserted in this Collection. Lord Carteret, (afterwards Lord Granville) the eighth Proprietor, did not resign till the 17th Sept. 1744, the date of the third Charter of *North* Carolina. After the resignation of the seven Proprietors in July, 1729, the Government became regal, and the Province of Carolina was divided into North and South Carolina, by an order of Council, which I cannot procure. Lord Carteret's eighth part, subsequently surrendered in 1744, was located by Commissioners appointed by him and the King, next adjoining Virginia; bounded North by the Virginia line, East by the Atlantic, South by latitude 35 degrees 34 minutes North, and West as far as the bounds of the Charter. (See note at the end of the second Charter of South Carolina.)

BOUNDARY DOCUMENTS.

That part of the Province of Carolina, described generally as lying South and West of Cape Fear, became South Carolina. Before the division directed by the order of Council, into North and South Carolina, the representatives that met at Charlestown, in the Provincial Assembly, met as the representatives of the *South and West part of the Province of Carolina.* Thus, in the act of Assembly passed "for the determination of the General Assemblies, and for preventing the inconveniences happening by the long intermission of General Assemblies," 20th June, 1694, Trott's Laws, p. 36, it is said, that the Assembly met at Charlestown for the South-west part of the Province, and by authority of the same; and so they continued to meet. The act authorizing the revolution of 1719 under Gov. John Moore, (23d Dec. 1719) was passed by the "Assembly in the settlement of South Carolina."

John Archdale in 1696 was Governor of North and South Carolina. So was Sir Nathan Johnson in 1703, and Col. Edward Tynte in 1710. The third Charter of North Carolina, dated 17th Sept. 1744, mentions the respective Governors of North and South Carolina; which two Colonies were not formally divided as above mentioned until the order of Council soon after the resignation of the seven Proprietors in 1729. But many disputes arose, before the boundary line of North and South Carolina was finally settled, which did not take place till 1815.

I can find no document filed in the offices at Columbia, respecting the Boundary Line, till the dispute occurred between Governor Johnson of South, and Governor Burrington of North Carolina; of which, the following memoranda were furnished to me by *Benjamin Elliot, Esq.* of Charleston, March, 1835.

"The first dispute concerning this Boundary Line appears to have occurred in 1732, when Governor Burrington of North Carolina issued the following notification of his idea of the true boundary.

"Timothy's Southern Gazette, Oct. 21, 1732.

"Notification of George Burrington, Governor of North Carolina.

"I am informed that several persons in South Carolina, have taken out warrants there, to survey lands on the North side of Wackamaw river, and on the lands formerly possessed by the Congerree Indians, which are within *this* government. Therefore to prevent unadvised people from parting with their money to no purpose, and to give satisfaction to all persons whom it may concern, I have transcribed his Majesty's instruction for ascertaining the bounds of the two governments of North and South Carolina.

"The King's instructions, 104.

"And in order to prevent any disputes that may arise about the Southern boundaries of our Province under your government, we are graciously pleased to signify our pleasure that a line shall be run by Commissioners appointed by each Province, beginning at the Sea, thirty miles distant from the mouth of Cape Fear River, on the South-west thereof, keeping at the same distance from the said river, as the course thereof runs to the main source or head thereof, and from thence the said boundary line shall be continued due West as far as the South Seas.

"But if Wackamaw lies within thirty miles of Cape Fear River, then that river to be the boundary from the Sea to the head thereof, and from thence a due West course to the South Seas."

"For the satisfaction of all men that bought land of the late Proprietors (before the King's purchase was compleated) scituated on the *North* side of Wackamaw River, in any other part between Cape Fear River and the line given by his majesty to this government, I give notice their

"rights and titles to all lands so purchased as aforesaid, are deemed and "allowed to be good and lawful by this government.

"N. B. The above recited instruction, is the same in his Excellency Go- "vernor Johnson's and mine, except the word "Southern" before boun- "daries, which is altered to Northern in his. The *head* of Wackamaw "river is within *ten* miles of Cape Fear River, and is not distant so "much as thirty miles in *any* place, but a few miles before it runs into "Winyaw Bay.

"North Carolina, Sept. 11, 1732. George Burrington."

"The above is transcribed verbatim from the Gazette of the day.

"To this, Robert Johnson, Governor of South Carolina, issued a counter- "proclamation, which follows, copied from Timothy's Southern Gazette, "Nov. 4, 1732.

"Governor Johnson of South Carolina. I being very much surprized "at his Excellency Governor Burrington's advertisement in this paper of "the 21st instant, relating to the boundaries of the two Colonies of North "and South Carolina, and his manner of interpreting his Majesty's in- "structions relating thereunto, think proper for the better information of "those concerned, to publish what I know concerning the intention of "his Majesty's said instruction, which is as follows:

"Governor Burrington and myself, were summoned to attend the board "of Trade, in order to settle the boundary of the two Provinces. Go- "vernor Burrington laid before their Lordships Col. Moseley's Map, de- "scribing the Rivers Cape Fear and Wackamaw, and insisted upon Wack- "amaw river being the boundary from the mouth to the head thereof, &c.

"We of South Carolina, desired their Lordships would not alter their first "resolution, which was thirty miles distant from the mouth of Cape Fear "River on the South-west side thereof, &c. as the first instruction pub- "lished by Governor Burrington sets forth; and their Lordships conclu- "ded that that should be the boundary, unless the *Mouth* of Wackamaw "River was within thirty miles of Cape Fear River; in which case, both "Governor Burrington and myself agreed Wackamaw River should be "the boundary. And I do apprehend the word *Mouth* being left out of "the last part of the instruction, was only a mistake in the wording of it.

"And I think proper farther to inform those it may concern, that I have "acquainted the Right Honorable the Lords of Trade, of the different "interpretations Governor Burrington and myself, have put on his Ma- "jesty's aforesaid instruction, and have desired his Majesty's further "order.

November 1, 1732. R. Johnson."

Among the documents relating to the Boundary line now in the Office of *Secretary of State at Columbia*, I find the following, viz.

Agreement between the Governors of South and North Carolina concerning the Boundary Line, 23d April, 1735.

Journal of Council, 21st November 1763, recommending to have the Catawba lands surveyed according to the Treaty of August 1763.

Deliberations of the Council of South Carolina, explaining the provisions of a Treaty with the Cherokees, of 18th December 1761, respecting a boundary line. See Book C 6, 13 Dec. 1805.

Royal Instructions dated 29th April 1763, respecting the boundary line between North and South Carolina. (Certified by P. Hamilton 18th Dec. 1805.)

Map of land relating to Fort Lyttleton, 12th Dec. 1764.

Copy of the King's additional instructions to Lord Charles Gre ville Montague, for running the boundary line, 7th June 1771.

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Another copy of the same, dated 10th June 1771.

The boundary line between the two States had been run, in pursuance of the royal instructions, in the years 1764 and 1772, (Drayton's view of South Carolina, p. 3.) and the line was supposed to be established between the two Colonies on 4th June 1772, by James Cook and Ephraim Mitchell, surveyors, and William Moultrie and William Thompson, commissioners on the part of South Carolina; and Thomas Rutherford and Thomas Polk, Surveyors, with Joseph Rutherford and William Dry, Commissioners on the part of North Carolina. Of this line of 1772, there is a copy in the office of the Secretary of State at Charleston, certified by Mr. Tillinghast, Surveyor General, 20th Nov. 1820; of which the original is declared to be (by certificate) at Columbia. I have not been able to find it there.

Governor Martin's Letter, 2nd Jan. 1772, on the subject of appointing Commissioners in pursuance of the Kings instructions.

Map of the new acqusitions off the Counties of Mecklenburgh and Tryon, 4th June 1772.

Account of expences of running the boundary line between North and South Carolina, 10th June 1772.

Extract from the representation of the Board of Trade to his Majesty, 20th June 1774.

Report of Mr. M'Allister on the boundary line between North and South Carolina, 20th December 1800.

Governor Drayton to Governor Williams, on the contested boundary line, Dec. 31st 1800.

Governor Drayton to Major. Pinckney, on the same, February 6th 1801.

Letter of B. Williams on the same, January 20th 1801.

B. Williams to Governor Drayton, on the same, 20th February 1801.

J. Drayton to Hugh Rose, Esq. on the same, 26th February 1801.

Hugh Rose to Governor Drayton, in reply, May 19th 1801.

Governor Williams to Governor Drayton, on the same, March 20th 1801.

Letter of postponement from the Governor of North Carolina, 3rd Ap. 1801.

Letter from the Governor of North Carolina, July 16th 1801.

Message from Governor Drayton to the House of Representatives. November 3d 1801.

Message on the boundary line, December 10th 1801.

Act concerning the line of division between this State and North Carolina, 21st December 1804. See public Laws.

Copies of the correspondence between Governor Paul Hamilton of South Carolina, and Governor James Turner of North Carolina, respecting the Boundary Line, in the years 1804 and 1805.

Appointment of Thomas Sumter, Commissioner on the Boundary Line, by Gov. Paul Hamilton, 12th August 1805, in pursuance of an Act of the Legislature of the preceding Session.

Governor Paul Hamilton to J. Pringle, Attorney General, concerning the Boundary Line, 25th Sept. 1805.

Letter of Judge Bay, concerning the same, 26th Sept. 1805.

Governor Paul Hamilton to Thomas Sumter, September 30th 1805.

Schedule of Papers on the contested boundary, delivered to the Commissioners at Lancaster, 20th November 1805.

Convention between North and South Carolina, 11th July 1805.

Report of the Commissioners, Thomas Sumter and Dr. Blythe, November 1, 1806, see pamphlet laws of South Carolina, December Session 1807, page 118. The original is not now remaining in the offices at Columbia.

Convention between North and South Carolina, on the boundary line, 4th September 1813.

Report of the Commissioners appointed at the last Session of the Legislature, (1813) to run the division line between Kershaw and Lancaster, 20th May 1814.

Copy of Mr. Salmon's field notes, Sep. 15th 1815.

Report of the Commissioners on the Boundary line, 2d November 1815, and in Miscell. Records, C. p. 236.

15th December 1815, Act of Assembly of South Carolina confirming the same: included in the public Laws, and which is the last document on the subject.

Documents relating to the boundary line between South Carolina and GEORGIA, viz.

Convention between the States of South Carolina and Georgia, dated April 28th 1787.

Act of the Legislature of Georgia, ratifying the boundary agreed on between the two States, February 1st 1788, concluded at Beaufort.

Act of the Legislature of South Carolina, to the same purpose, 29th February 1788. Grimke's public Laws, p. 460.

Documents relating to the boundary between South and North Carolina, to be found in the Acts of the North Carolina Legislature, and in the office of the Secretary of State at Raleigh, North Carolina.

Laws of North Carolina, quarto edition of 1804, p. 8. The great Deed of Grant, A. D. 1668.

Same edition, v. 2. p. 214, Act of the Legislature appointing Commissioners to extend the boundary line, between North and South Carolina, A. D. 1803. Laws of North Carolina, 8vo. edition of 1821.

An act to amend an act, empowering the Governor to treat with South Carolina and Georgia, on the subject of Boundary, p. 1013, and the marginal references. A. D. 1804.

Agreement between this State and South Carolina, p. 1315, being an act to appoint Commissioners to run the boundary line, A. D. 1814.

Act of the Legislature ratifying the same, p. 1318. A. D. 1815.

Communication from Governor Swain of North Carolina, to Dr. Thomas Cooper, Raleigh, 27th March 1835.

"The first survey was made in 1735, under the authority of the royal government; a copy of that survey is in the Secretary of State's office, obtained from London about 30 years ago. It commenced at the mouth of Little River, on the sea shore, was extended in a north west direction, 64½ miles, to a point two miles north west of one of the branches of little Pedee. In 1737 the line was extended in the same direction, 22 miles, to a stake in a Meadow, which was erroneously supposed to be at the point of intersection with the 35th degree, of north latitude. The entire length of the two lines is 86 miles 174 poles. Of the latter line, the original is in London, and we have a certified copy only. The names of the Commissioners are not attached to either plat.

"In 1764, 24th September, James Moore, George Pawley, Samuel Wiley, and Arthur Mackay, under the direction of Governor Dobbs of

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North Carolina, and Governor Bull of South Carolina, extended the boundary due west from the stake at which the line of 1737 terminated, the distance of 62 miles, intersecting the Charleston road at 61 miles, to a point near the Washaw Creek. The original plat of survey is in the office.

"In 1772, the line was extended from this point, under the authority of Governor Tryon, to the Tryon mountain; and the controversy which commenced with the formation of our Constitution, and was unsettled until 1813, between this State and South Carolina, grew out of it. The line then designated, is part of the present boundary of the State, though the running was obviously erroneous, and operated greatly to the injury of North Carolina. We have no copy of this survey.

"In 1813, the first eight miles of the line of 1772, beginning near the Charleston road, and ending at the Gum, on the banks of twelve mile creek, was re-run under the superintendence of John Steele, Montfort Stokes, Robert Burton, commissioners on the part of this State, and Joseph Blythe, Henry Middleton, and John Blassingame, Commissioners on the part of South Carolina. Original survey in the office.

"In 1815, the line was extended from the termination of the line of 1772. Beginning at the Rock near the Tryon Mountain, and ending at the point of intersection with the boundary of Georgia, in the 35th degree of north latitude, designated by a Stone marked latitude 35, A. D. 1813, planted on the east bank of Chataga river. The length of this line is 74 miles, 189 poles. It was run under the direction of Thomas Love, Montfort Stokes, John Patton, of North—and Joseph Blythe, John Blassingame, and Geo. W. Earle, of South Carolina. This survey is on the file.

Yours very respectfully,
D. S. SWAIN."

Addressed to Joseph G. Cogswell, Esq. (for Dr. Cooper.)

EDITOR.

AN ORDINANCE,

For ratifying and confirming a Convention between the States of South Carolina and Georgia, concluded at Beaufort, in the State of South Carolina, on the 28th day of April, 1787, and in the 11th year of the Independence of the United States of America.

WHEREAS, the State of South Carolina did heretofore present a petition to the United States in Congress assembled, and did therein set forth, that a dispute and difference had arisen and subsisted between the States of South Carolina and Georgia concerning boundaries, the said States claiming respectively the same territories, and that the case and claim of the State of South Carolina was as follows, that is to say, "Charles the II, King of Great Britain, by charter, dated the 24th day of March, in the 15th year of his reign, granted to 8 persons therein named, as lords proprietors thereof, all the lands lying and being within his dominions of America, between 31 and 36 degrees of north latitude, in a direct west line to the South Seas, stiling the lands so described, the Province of Carolina: That on the 30th day of June, in the 17th year of his reign, the said King granted to the said lords proprietors a 2d charter, enlarging the bounds of Carolina, viz. from 29 degrees of north latitude to 36 degrees 30 minutes, and from those points on the sea coast west in a direct line to the South Seas: That 7 of the said proprietors of Carolina sold and surrendered to George the II, late King of Great Britain, all their title and interest in the said Province, and the share of the remaining proprietor was separated from the King's, and allotted to him in the north part of North Carolina: That Carolina was afterwards divided into 2 Provinces, called North and South Carolina; That by a charter dated the 9th of June, 1732, George the IId, King of Great Britain, granted to certain persons therein named, all the lands lying between the rivers Savannah and Altamaha, and between lines to be drawn from the heads of those rivers respectively to the South Sea, and stiled the said colony Georgia: That by the treaty of peace concluded at Paris, on the 10th day of February, 1763, the river Mississippi was declared to be the western boundary of the North American colonies: That the Governor of South Carolina, in the year 1762, conceiving that the lands to the south of the Altamaha still belonged to South Carolina, granted several tracts of the said land: That the government of Georgia complained to the King of Great Britain respecting those grants, as being for land within its limits, and thereupon his Majesty, by proclamation, dated the 7th day of October, 1763, annexed to Georgia all the lands laying between the rivers Altamaha and St. Mary, the validity of the grants passed by the Governor of South Carolina as aforesaid, remaining however acknowledged and uncontested, and the grantees of the said land or their representatives still holding it as their legal estate: That South Carolina

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claims the land lying between the North Carolina line and a line to run due-west from the mouth of Tugoloo river to the Mississippi, because as the said State contends, the river Savannah loses that name at the confluence of Tugoloo and Keowee rivers, consequently that spot is the head of Savannah river: The State of Georgia on the other hand contends, that the source of Keowee river is to be considered as the head of Savannah river: That the State of South Carolina also claims all the lands lying between a line to be drawn from the head of the river St. Mary, the head of Altamaha, the Mississippi and Florida, being, as the said State contends, within the limits of its charter, and not annexed to Georgia by the said proclamation of 1763: The State of Georgia on the other hand contends that the tract of country last mentioned is a part of that State: The State of South Carolina did therefore by their said petition pray for an hearing and determination of the difference and dispute subsisting as aforesaid between the said State and Georgia, agreeable to the articles of confederation and perpetual union between the United States of America: *And whereas*, the State of Georgia were duly notified of the said petition, and did by their lawful agents appear in order to establish their right to the premises in manner directed by the said articles of confederation, and proceedings were thereon had in Congress in order to the appointment of judges to constitute a court for hearing and determining the said matter in question: *And whereas*, it appeared to be the sincere wish and desire of the said States of South Carolina and Georgia, that all and singular the differences and claims subsisting between the said States relative to boundary, should be amicably adjusted and compromised: *And whereas*, the legislature of the State of South Carolina did elect Charles Cotesworth Pinckney, Andrew Pickens and Pierce Butler, Esqrs. commissioners, and did invest them or a majority of them with full and absolute power and authority in behalf of that State to settle and compromise all and singular the differences, controversies, disputes and claims which subsist between the said State and the State of Georgia relative to boundary, and to establish and permanently fix a boundary between the 2 States: And the said State of South Carolina did declare, that it would at all times thereafter ratify and confirm all and whatsoever the said commissioners or a majority of them should do in and touching the premises, and that the same should be forever binding on the said State of South Carolina: *And whereas*, the legislature of the State of Georgia did appoint John Houston, John Habersham and Lachlan M'Intosh, Esqrs. commissioners, and did invest them with full and absolute power and authority in behalf of that State to settle and compromise all and singular the differences, controversies, disputes and claims which subsist between the said State and the State of South Carolina relative to boundary, and to establish and permanently fix a boundary between the 2 States: And the said State of Georgia did also declare, that it would at all times thereafter ratify and confirm all and whatsoever the said last commissioners or a majority of them should do in and touching the premises, and that the same should be forever binding on the said State of Georgia: *And whereas*, the said Charles Cotesworth Pinckney, Andrew Pickens, Pierce Butler, John Habersham, and Lachlin M'Intosh, Esqrs. Commissioners on the part of the States of South Carolina and Georgia respectively, did by mutual consent assemble at the town of Beaufort, in the State of South Carolina, on the 24th day of April, 1787, in order to the due execution of their respective trusts, and did reciprocally exchange and consider their full powers, and did declare the same legal and forever binding on both States, and

in conferring on the most effectual means of adjusting the differences subsisting between the said States, and of establishing and permanently fixing a boundary between them, did mutually agree for and in behalf of their respective States to the following articles, that is to say—

Article I. The most northern branch or stream of the river Savannah from the sea or mouth of such stream to* the fork or confluence of the rivers now called Tugoloo and Keowee, and from thence the most northern branch or stream of the said river Tugoloo till it intersects the northern boundary line of South Carolina, if the said branch or stream extends so far north, reserving all the islands in the said rivers Tugoloo and Savannah to Georgia; but if the head spring or source of any branch or stream of the said river Tugoloo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi to be drawn from the head spring or source of the said branch or stream of Tugoloo river, which extends to the highest northern latitude, shall forever hereafter form the separation, limit and boundary between the States of South Carolina and Georgia.

Art. II. The navigation of the river Savannah at and from the bar and mouth along the north-east side of Cockspur island, and up the direct course of the main northern channel along the northern side of Hutchinson's island opposite the town of Savannah to the upper end of the said island, and from thence up the bed or principal stream of the said river to the confluence of the rivers Tugoloo and Keowee, and from the confluence up the channel of the most northern stream of Tugoloo river to its source, and back again by the same channel to the Atlantic ocean, is hereby declared to be henceforth equally free to the citizens of both States, and exempt from all duties, tolls, hinderance, interruption or molestation whatsoever, attempted to be enforced by one State on the citizens of the other; and all the rest of the river Savannah to the southward of the foregoing description, is acknowledged to be the exclusive right of the State of Georgia.

Art. III. The State of South Carolina shall not hereafter claim any lands to the eastward,† southward, south-westward, or west of the boundary above established, but hereby relinquishes and cedes to the State of Georgia all the right, title and claim which the said State of South Carolina hath to the government, sovereignty and jurisdiction in and over the same, and also the right and pre-emption of the soil from the native Indians, and all other the estate, property and claim which the State of South Carolina hath in or to the said lands.

Art. IV. The State of Georgia shall not hereafter claim any lands to the northward and north-eastward of the boundary above established, but hereby relinquishes and cedes to the State of South Carolina all the right, title and claim which the said State of Georgia hath to the government, sovereignty and jurisdiction in and over the same, and also the right of pre-emption of the soil from the native Indians, and all other the estate, property and claim which the State of Georgia hath in or to the said lands.

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* There is a manifest mistake in Grimke's edition of this Act, Public Laws, p. 460; the word IN, ought to be, TO. In the Digest of the Laws of Georgia by Robt. and Geo. Watkins, neither the word IN, or the word TO is inserted; nor any substituted. The passage in that digest reads thus: AND FROM THENCE THE MOST NORTHERN BRANCH OR STREAM OF THE RIVER TUGOLOO. The Editor has printed from the original manuscript Act.

† This is a manifest mistake; for the whole of South Carolina is actually situated to the East of the described boundary. The same mistake is found in Robert and Geo. Watkin's Digest of the Laws of Georgia p. 754.

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Art. V. The lands heretofore granted by either of the said states between the forks of Tugoloo and Keowee, shall be the private property of the first grantees and their representative heirs and assigns; and the grantees of any of the lands under the State of Georgia shall within 12 months from the date hereof cause such grants or authentic copies thereof, ratified under the seal of the State of Georgia, to be deposited in the office of the Secretary of the State of South Carolina, to the end that the same may be recorded there, and after the same shall have been so recorded, the grantees shall be entitled to receive again from the said Secretary their respective grants or the copies thereof, whichsoever may have been so desposited, without any charge or fees of office whatsoever, and every grant, or of which the copy certified as abovementioned, shall not be so deposited, shall be adjudged void.

Art. VI. The Commissioners on the part of the State of South Carolina do not by any of the above articles mean to cede, relinquish or weaken the right, title and claim of any of the individual citizens of the State of South Carolina to any lands situated in Georgia, particularly to the lands situated to the south or south-west of the river Altamaha, and granted during the administration of Governor Boone, in the year 1763, and they do hereby declare, that the right and title of the said citizens to the same, is and ought to remain as full, strong and effectual as if this convention had not been made. The commissioners on the part of the State of Georgia do decline entering into any negociation relative to the lands mentioned in this article, as they conceive they are not authorised so to do by the powers delegated to them.

Be it therefore ordained by the Honorable the Senate and House of Representatives in General Assembly met, and by the authority of the same, That the said convention and all the articles thereof shall be forever binding on the State of South Carolina, and that the same is hereby fully and absolutely ratified and confirmed.

In the Senate House, the twenty-ninth day of February, in the Year of our Lord one thousand seven hundred and eighty-eight, and in the twelfth Year of the Independence of the United States of America.

JOHN LLOYD,
President of the Senate.

JOHN JULIUS PRINGLE,
Speaker of the House of Representatives.

AN ACT

CONCERNING THE LINE OF DIVISION BETWEEN THIS STATE AND THE STATE OF NORTH CAROLINA.

WHEREAS, at a time when South Carolina and North Carolina acknowledged the sovereignty of the British Government, a line was run under the authority of the said government, by commissioners duly appointed, and the boundaries between the then provinces, (now states) aforesaid, clearly ascertained and fixed; and from that period until the present time, the country has exercised constant and uninterrupted jurisdiction over all the inhabitants who have resided within the lines which were then ascertained, and acknowledged to be the lines of South Carolina: *And whereas, nevertheless,* the State of North Carolina hath at sundry times, manifested a desire to ascertain and designate the line which is the boundary between the two states: *And whereas,* it is unknown to this general assembly what the specific claims set up by the said state of North Carolina, in this behalf are; but being sincerely desirous that all claims and differences between this state and the state of North Carolina, should be ascertained and adjusted in the most amicable manner, will appoint commissioners to ascertain and fix the same.

Be it therefore enacted by the honorable the Senate and House of Representatives, of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same, That three commissioners be appointed by his Excellency, the Governor or Commander-in-Chief of this state for the time being; and full power and authority is hereby given unto them, or a majority of them, to meet the commissioners who already are, or hereafter may be appointed by the state of North Carolina, at such time and place as the executives of the said states shall appoint and direct; and with them to settle and adjust all and singular the differences, disputes, controversies and claims whatsoever, respecting the territory and boundaries between this state and the state of North Carolina: And that whatsoever the said commissioners hereby appointed, or a majority of them, shall do or cause to be done in the premises, shall become binding and obligatory to all intents and purposes whatsoever, on the said state of South Carolina, so soon as the same shall be ratified and confirmed by the legislature thereof, and not before.

Commissioners to be appointed.

Their acts to be binding, when ratified by the legislature.

And be it further enacted by the authority aforesaid, That the said commissioners, or a majority of them, shall have full power, and they are hereby authorized to employ such and so many persons as they shall deem necessary, for the purpose of carrying this act into complete effect, according to the true intent and meaning thereof.

Powers of the said commissioners.

And be it further enacted by the authority aforesaid, That in case of death, resignation, incapacity or refusal to act, of all or either of the commissioners so to be appointed, his excellency the governor or com-

How vacancies are to be filled.

BOUNDARY DOCUMENTS.

mander-in-chief for the time being, shall have full power, and he is hereby required, from time to time, to appoint another fit and proper person, to act in the place and stead of the commissioner who shall die, resign, remove, become incapable or refuse to act.

Powers of persons appointed commissioners.

And be it further enacted by the authority aforesaid, That every commissioner so to be appointed by the governor or commander-in-chief for the time being, as is herein before directed, shall have, and is hereby invested with full powers, to all intents and purposes whatsoever, to carry the said act into full and complete effect, according to the true intent and meaning thereof.

Governor to notify the commissioners of the time and place of their meeting.

And be it further enacted by the authority aforesaid, That his excellency the governor or commander-in-chief for the time being, as soon as he shall have agreed with the executive of North Carolina, on the time and place of meeting of the commissioners of this state, with the commissioners of the state of North Carolina, shall notify them thereof, and commission them under his hand and the seal of this state, to carry this act into effect.

Provided nevertheless, and be it also enacted by the authority aforesaid, That nothing herein contained, shall be construed so as in any manner to invalidate, or impair, or impugn the right or title which the said state of South Carolina hath to the whole, or any part of the said disputed territory, until the State of North Carolina shall have so altered her bill of rights, as to enable the legislature thereof to ratify and make valid to all intents and purposes, all and singular the actings and doings of the said commissioners, appointed or to be appointed, on the part of the state of North Carolina.

In the Senate House, the twenty first day of December, in the year of our Lord one thousand eight hundred and four, and in the twenty-ninth year of the Sovereignty and Independence of the United States of America.

JOHN WARD, *President of the Senate.*

W. C. PINCKNEY, *Speaker of the House of Representatives.*

AN ACT,

For ratifying and confirming a provisional agreement entered into between the State of South Carolina and the State of North Carolina, concluded at M'Kinney's, on Toxaway River, on the fourth day of September, in the year of our Lord one thousand eight hundred and thirteen.

WHEREAS, commissioners on the part of the state of South Carolina, and on the part of the state of North Carolina, being duly and properly authorized, did meet at M'Kinney's, on the Toxaway river, in the state of

South Carolina, on the fourth day of September, in the year of our Lord one thousand eight hundred and thirteen, and did make and enter into a provisional article of agreement relative to the boundary line, in the following words, viz.

"A provisional article of agreement entered into between the commissioners of the state of South Carolina, and the commissioners of the state of North Carolina, at M'Kinney's, on Toxaway river, on the fourth day of September, in the year of our Lord one thousand eight hundred and thirteen: Whereas the undersigned, Joseph Blythe, Henry Middleton and John Blasingame, on the part of South Carolina, and John Steel, Montfort Stokes and Robert Burton, on the part of the state of North Carolina, duly appointed commissioners by their respective states, to carry into effect a conventional agreement on boundary, signed at Columbia, in the state of South Carolina, on the 11th day of July, 1808, did meet on the twentieth day of July last, near the termination of the line of 1772, and hath continued their meetings by several adjournments to this present date. And whereas, the said conventional agreement, by the third article thereof, provides, "that from the termination of the line of 1772, a line shall be extended in a direct course to that point in the ridge of mountains which divides the eastern from the western waters, where the 35th degree of north latitude shall be found to strike it nearest to the termination of the said line of 1772, thence along the top of the said ridge to the western extremity of the state of South Carolina." The commissioners above named, after having ascertained from the observations and reports of the astronomers accompanying them, the thirty-fifth degree of north latitude at several points, and lastly on the eastern bank of the Chatooga river, and after conferring fully on the matters committed to them, perceiving real difficulties to exist in the execution, and having on each part maintained different opinions as to the practicability of fixing a boundary line, according to the true intent and meaning of the said article, considering nevertheless that it is essential to the interest and convenience of both states, that a line of separation and limits should be ascertained and established, with as little delay as possible, the said commissioners have agreed, and do hereby agree, to recommend to the Legislatures of their states respectively, the following article, as a substitute for the said third article of the conventional agreement; which substitute, when ratified by the Legislatures of the said states, shall be, to all intents and purposes, binding and conclusive, and not before, to wit: From the termination of the line of one thousand seven hundred and seventy-two, a line shall be extended due west to the ridge dividing the waters of the north fork of Pacolet river from the waters of the north fork of Saluda river, thence along the said ridge to the ridge that divides the Saluda waters from those of Green river, thence along the said ridge to where the same joins the main ridge which divides the eastern from the western waters, thence along the said ridge to that part of it which is intersected by the Cherokee boundary line run in the year one thousand seven hundred and ninety-seven; from the centre of the said ridge at the point of intersection, the line shall extend in a direct course to the eastern bank of the Chatooga river, where the thirty-fifth degree of north latitude has been found to strike it, and where a rock has been marked by the aforesaid commissioners with the following inscription, viz. LAT. 35, 1813. It being understood and agreed that the said lines shall be so run as to leave all the waters of Saluda river within the state of South Carolina, but shall in no part run north of a course due west, from the termination of the line of 1772.

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In testimony whereof, we have hereunto set our hands and affixed our seals, as commissioners of our respective states, at M'Kinney's, in the state of South Carolina, the 4th day of September, in the year of our Lord one thousand eight hundred and thirteen, and of the Independence of the United States of America the thirty-eighth.

(Signed,)

JOSEPH BLYTHE, L. S.
HENRY MIDDLETON, L. S.
JOHN BLASINGAME, L. S.
JOHN STEEL, L. S.
MONTFORT STOKES, L. S.
ROBERT BURTON, L. S.

Signed, sealed, and interchangeably delivered by the commissioners of the two states, in the presence of us, who have hereunto subscribed as witnesses.

(Signed,)

GEORGE BLACKBURN,
ROBERT MACNAMARA,
JAMES M'KINNEY,
JOSEPH CALDWELL,
M. R. ALEXANDER,
ZACHARIAH CANDLER.

Be it therefore enacted by the honorable the Senate and House of Representatives now met and sitting in general assembly, and by the authority of the same, That the said provisional article of agreement, and every part thereof, is hereby fully and absolutely ratified and confirmed, and the same is likewise hereby substituted for, and in the room and stead of the said third article of the conventional agreement on boundary, signed in Columbia, in the state of South Carolina, on the 11th day of July, one thousand eight hundred and eight. *Provided however,* That if the state of North Carolina should contest, or refuse to ratify, or call in question, the agreement so entered into by the said commissioners, under any pretext whatever, all the rights, claims and pretensions of the state of South Carolina in relation thereto shall revive and exist in the same force and effect as before the passing of this act.

In the Senate House, the seventeenth day of December, in the Year of our Lord one thousand eight hundred and thirteen, and in the thirty-eighth Year of the Independence of the United States of America.

SAVAGE SMITH, *President of the Senate,*
JOHN GEDDES, *Speaker of the House of Representatives.*

AN ACT,

Ratifying and confirming the convention between the commissioners of the states of South Carolina and North Carolina, establishing the dividing line between the said states, concluded at Greenville, in the State of South Carolina, on the 2d day of November, 1815.

WHEREAS Joseph Blythe, John Blasingame, and George W. Earle, on the part of the state of South Carolina, and Thomas Love, Montford Stokes, and John Patton, on the part of the state of North Carolina, were duly appointed and authorized on the part of their respective states, to run and mark the dividing line between the said States of South Carolina and North Carolina, agreeably to the provisional agreement entered into at M'Kenny's, on Toxaway river, on the 4th day of September, 1813, and subsequently ratified by the said states respectively: and whereas the said Joseph Blythe, John Blasingame and George W. Earle, on the part of the said state of South Carolina, and the said Thomas Love, Montford Stokes, and John Patton, on the part of the said state of North Carolina, have, in pursuance of the powers vested in them by their respective States, proceeded to run and mark the said line, and have jointly and interchangeably concurred in and submitted a report under their hands and seals, on the subject of the said line, which report is in the words and figures following, to wit:

To his Excellency David R. Williams, Esquire, Governor of the State of South Carolina, and his Excellency William Miller, Esquire, Governor of the state of North Carolina.

The joint report of the commissioners appointed to run and mark the dividing line between the states of South and North Carolina:

We the undersigned, Joseph Blythe, John Blasingame, and George W. Earle, on the part of South Carolina, and Thomas Love, Montford Stokes, and John Patton, on the part of North Carolina, duly appointed commissioners by their respective states, to run and mark the dividing line between the states aforesaid, agreeably to the provisional article of agreement entered into at M'Kenny's, on Toxaway river, on the fourth day of September 1813, and subsequently ratified by the legislatures of the said states respectively,

Report, That in pursuance of their instructions, they met at the house of Mrs. Earle, on North Pacolet, in Rutherford county, in the state of North Carolina, on the 11th day of September, A. D. 1815. and afterwards by several adjournments at different places on the said dividing line, and lastly at Greenville, in the state of South Carolina, on the 2d

BOUNDARY DOCUMENTS.

day of November, A. D. 1815. Having appointed George Salmon, surveyor on the part of South Carolina, and Maj. Ross Alexander, surveyor on the part of North Carolina; and having ascertained by observation and by actual experiment, that a course due west, from the termination of the line of 1772, did not strike the point of the ridge dividing the waters of the north fork of Pacolet river from the waters of the north fork of Saluda river, in the manner contemplated by the commissioners who formed the said agreement; and finding also, that running a line on the top of the said ridge, so as to leave all the waters of Saluda river within the state of South Carolina, would, in one place, run a little north of a course due west from the termination of the said line of 1772, consequently, that the said provisional article of agreement entered into at M'Kenny's, on Toxaway river, in 1813, could not be strictly and literally carried into effect. The commissioners of the said states respectively, did, however, proceed to run and mark a line due west from the termination of the line of 1772, four miles and 90 poles to a stone marked S. C. and N. C. and from thence south 25° west, to the top of the ridge dividing the waters of the north fork of Pacolet river from the waters of the north fork of Saluda river, thence along the top of said ridge, to a stone set up due west from the termination of the said line of 1772, marked as a corner, thence a direct line due west, crossing three small branches of Saluda river, to the top of the ridge dividing the waters of Saluda river from those of Green river, thence along the said ridge, to where the same joins the main ridge which divides the eastern from the western waters, thence along the said ridge to a place called the commissioners' camp, near Benson's Gap turnpike road; at which place, in a full board of the said commissioners of both states, it was agreed that for the purpose of having a natural boundary as far as to the Cherokee boundary line, run in the year 1797, a line should be run on the ridge round the head springs of the north fork of Saluda river, so as to leave all the waters of Saluda within the state of South Carolina; considering it therefore, as essential to the interests and convenience of both states, that a line of separation and limits should be established with as little delay as possible, the said commissioners, in the spirit of reciprocal accommodation, have mutually agreed to, and have run and marked the line hereinafter described, and do unanimously recommend that the same be established by the legislatures of the respective states, as the line intended by the provisional article aforesaid, and as the permanent line of separation between the said states, that is to say: Beginning at a stone set up at the termination of the line of 1772, and marked S. C. and N. C. September 15th 1815, running thence west four miles and 90 poles, to a stone marked S. C. and N. C. thence south 25° west, 118 poles to the top of the ridge dividing the waters of the north fork of Pacolet river from the waters of the north fork of Saluda river, thence along the various courses of the said ridge, (agreeable to the plat and survey, signed by the commissioners and surveyors aforesaid, and accompanying this report) to the ridge that divides the Saluda waters from those of Green river, thence along the various courses of the said ridge, agreeably to the said plat and survey, to a stone set up where the said ridge joins the said ridge which divides the eastern from the western waters, and which stone is marked S. C. and N. C. September 28th, A. D. 1815, thence along the various courses of the said ridge, agreeable to the said plat and survey, to a stone set up on that part of it which is intersected by the Cherokee boundary line, run in the year 1797, and which stone is

marked S. C. and N. C. 1813, and from the said last mentioned stone, on the top of the said ridge, at the point of intersection aforesaid, a direct line, south 68 and one-fourth west, twenty miles and 11 poles, to the 35th degree of north latitude, at the rock in the east bank of Chatooga river, marked latitude 35o A. D. 1813: In all a distance of twenty-four miles and 189 poles.

We the undersigned, commissioners of both states respectively, do hereby certify and submit this report, interchangeably signed in duplicate, under our hands and seals, at Greenville, in the state of South Carolina, the 2d day of November, A. D. 1815.

JOSEPH BLYTHE, (SEAL.)
JOHN BLASINGAME, (SEAL,)
GEORGE W. EARLE, (SEAL.)
THOMAS LOVE, (SEAL.)
M. STOKES, (SEAL.)
JOHN PATTON, (SEAL.)

Be it therefore enacted by the honorable the Senate and House of Representatives, now met and sitting in general assembly, and by the authority of the same, That the said report and agreement, made by the aforesaid commissioners, and every article and clause thereof, be, and the same is hereby confirmed; and the boundary line agreed upon and marked out by the said commissioners, is hereby confirmed and established, and shall be forever binding on the state of South Carolina: *Provided,* the proceedings of said commissioners shall be confirmed by the state of North Carolina.

And be it further enacted by the authority aforesaid, That the return of the commissioners aforesaid, and the plat of the boundary line, with the bearings and distances thereof, signed by the commissioners and surveyors of both states, and submitted by them to the legislature, shall be duly recorded, and kept in the office of the Secretary of State, at Columbia, and a true copy thereof be deposited in the office of the Secretary of State, in Charleston; and that the field book of the surveyor, on the part of South Carolina, shall be recorded in the office of the Secretary of state, in Columbia; and that every citizen of this state shall, on application, be entitled to a copy of said papers, on paying the usual fees.

In the Senate House, the fifteenth day of December, in the year of our Lord one thousand eight hundred and fifteen, and in the fortieth year of the Independence of the United States of America.

JAMES R. PRINGLE,
President of the Senate.

THOMAS BENNETT,
Speaker of the House of Representatives.

BOUNDARY DOCUMENTS.

AN ACT,

To declare the assent of this State to a Convention between this State and the State of Georgia, for the purpose of improving the navigation of Savannah and Tugaloo Rivers.

Rivers to be made navigable.

SEC. 1. *Be it enacted by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same,* That as soon as the same shall have been approved of by the State of Georgia and the Congress of the United States, the following Articles shall form and constitute a convention between the two States, for improving the navigation of the Savannah and Tugaloo Rivers, and shall not be altered without the consent of both States.

Expense, how to be defrayed.

Article the First. The expense of improving and rendering navigable the Savannah and Tugaloo Rivers, so far as they form the boundary of the two States, shall be borne equally by South Carolina and Georgia.

Land to be purchased.

Article Second. Lands required for this purpose, on these Rivers, may be purchased and held in the names of the Superintendents of the Savannah Inland Navigation, and their successors in office; but the jurisdiction over the lands so acquired, shall remain in the State in which they are situated.

Value thereof to be ascertained.

Article Third. When the Superintendents and the owner or owners of such lands cannot agree as to the price thereof, or where, for any other cause, the surrender thereof cannot be obtained, the said lands may be taken at a valuation, to be made by a majority of five commissioners, to be appointed for that purpose by the Court of Law of the county or district in which said lands are situated; and the lands so valued, shall vest, for the purposes of the said navigation alone, in the said superintendents and their successors in office, so soon as the said valuation shall be paid, or where it may be refused, shall be tendered.

Surveys to be made.

Article Fourth. Before any work shall be begun on these Rivers, full surveys and detailed estimates shall be made and presented to the Legislatures of both states; and for this purpose the Governor of each state shall appoint one commissioner, and these two commissioners, within the next year, shall cause the said surveys and estimates to be made, together with such plans as they may deem necessary; and to defray the expenses thereof, each state shall make an appropriation of five hundred dollars, if so much should be necessary. The compensation to the commissioners shall be made by their respective states.

Superintendents to be appointed.

Article Fifth. The works on these Rivers shall be constructed under the direction of two superintendents—one to be appointed by each state; these superintendents and their successors in office, shall be known by the name and style of "The Superintendents of the Savannah Inland Navigation;" and by such name may sue and be sued, plead and be impleaded, in any Court of Law or Equity of the states of Georgia or South Carolina; and the said superintendents and their successors in

office, shall have full power to make all contracts for effecting such works on said Rivers, as may be ordered by the Legislatures of the said states: *Provided*, that the said contracts shall not exceed, nor be binding on the said states, to any amount beyond the appropriations made for that purpose, according to the terms of this convention hereinafter expressed.

Officers to be appointed, and toll collected.

Article Sixth. And the said superintendents and their successors in office, shall have full power to appoint, and at their pleasure to displace, all such engineers, agents, toll collectors, and other officers, as may be necessary for completing, repairing, and protecting the said works, and for collecting all tolls which may be imposed thereat.

Rates of toll may be altered.

Article Seventh. And the said superintendents and their successors in office, shall have full power to establish, and from time to time to alter or repeal, such rates of toll on boats, rafts and other vessels passing said works, or on the goods ladened on board thereof, as they may think just and proper; to cause the same to be collected and deposited with a Treasurer by them to be appointed, to make and enforce all regulations for the passage of boats, rafts and other vessels through the said works, and generally to do and perform all such acts, and make such ordinances, as are necessary for completing, repairing, preserving and rendering productive the said works.

Toll to be the same for the boats of either state.

Article Eighth. The tolls imposed on boats, rafts or other vessels, or the goods laden on board thereof, belonging to the citizens of one state, shall be the same as the tolls imposed on the boats, rafts and other vessels, or goods laden on board thereof, belonging to the citizens of the other state.

Toll on minerals.

Article Ninth. In case there should be worked in either state, any mine of iron, lead or coal, or any quarry of lime, gypsum, marble, or other building stone, the state in which such mine or quarry is situated, shall have the exclusive right to fix the rates of toll on the products of such mine or quarry, and the boats employed in transporting the same.

Tolls how to be applied.

Article Tenth. All tolls collected on said Rivers, in pursuance of this convention, shall be applied and expended in the following manner—1st. In keeping in repair and defraying the current expenses of the said works. 2nd. In making such further improvements in the navigation of the said Rivers, as the Legislatures of the said states may order. When such further improvements are not so ordered, the tolls shall be reduced so as merely to repair, renew, and keep the said works in perfect operation.

Works not to be demolished.

Article Eleventh. The state in which any Canal may be cut, or other work erected in pursuance of this convention, shall not cause or permit the same to be demolished or impaired, without the consent of the other State; but each state will pass such laws as may be necessary to preserve and protect said works.

Appropriations to be made.

Article Twelfth. The Legislature of each state will make such appropriations for improving the navigation of said Rivers as it may deem necessary; and the smallest appropriation made by either state, shall form one half of the whole appropriation for that purpose.

Payments for work done, how to be made.

Article Thirteenth. All payments for work done, shall be made by drafts on the State Treasury, signed by both the superintendents; and when they draw on the Treasury of one state, they shall draw for an equal amount on the treasury of the other.

Drafts how to be paid.

Article fourteenth. One of the said states shall not be answerable for the drafts of the said superintendents on the Treasury of the other state.

Superintendent, how to be paid.

Article Fifteenth. Each State shall pay the salary and personal expenses of its own superintendent, and shall determine the period for which he shall be elected.

Cases of disagreement, how to be settled.

Article Sixteenth. When a question occurs, on which the superintendents do not agree, they shall call into their consultation the principal Engineer, and he shall be entitled to vote on the question, and a majority of votes shall decide it.

Vacancy, how to be filled.

Article Seventeenth. When the work is commenced, if a vacancy of the superintendents should occur, the principal Engineer shall fill his place, until the regular appointment of a successor.

In the Senate House, the twentieth day of December, in the Year of our Lord one thousand eight hundred and twenty-five, and in the fiftieth Year of the Independence of the United States of America.

JACOB BOND I'ON,

President of the Senate,

JOHN B. O'NEALL,

Speaker of the House of Representatives.

JUDGE BREVARD'S

Observations on the Legislative history of South Carolina,

(Brevard's Digest, page X of Vol. I.)

The legal history of South Carolina, may be divided into four periods: I. That which commences and ends with the proprietary government. II. That which commences with the demolition of the proprietary government, and ends with the suspension of royal authority, by the political convulsions which preceded the revolution. III. That which begins with the first movements of the revolution, and ends with the extinction of the royal government, and the establishment of Independence by the the treaty of peace with Great Britain. IV. That which begins with the establishment of Independence and reaches down to the present time.

FIRST PERIOD.

The country in North America, south of the 36th degree of north latitude, was granted in 1630, by king Charles the first, to Sir Robert Heath, his attorney general, under the name of Carolina; but the grant never took effect. In 1663, king Charles the second, one of the most unprincipled of sovereigns and profligate of men, in order to promote the *pious zeal* of certain of his confidential servants and courtiers, for the *propagation of the Christian faith*, (as his charter sets forth) granted to them "all that territory, situate in his dominions in America, extending from the north end of the island called Lucke's Island, in the Virginia seas, within thirty-six degrees of north latitude, and to the west as far as the south seas, and so southwardly as far as the river St. Mathias, bordering on East Florida, and within thirty-one degrees of north latitude, and so west in a direct line as far as the south seas."

The grantees were, Edward earl of Clarendon, George Duke of Albermarle, William lord Craven, John lord Berkley, Anthony lord Ashley, sir George Carteret, sir William Berkley, and sir John Colleton.

In 1665, this charter was renewed and enlarged, so as to comprehend the territory lying within lines running "north and eastward as far as the end of Charahake river, or gullet, upon a straight westernly line to Wyonoake creek, which lies within or about the degree of thirty-six and thirty minutes, northern latitude, and so west in a direct line as far as the south seas, and south and westward as far as the degree of twenty-nine inclusive, northern latitude, and so west in a direct line as far as the south seas."

BRevard's Observations

This territory was granted "in free and common socage," to the grantees as "absolute Lords and Proprietors," who were empowered to make laws and constitutions, with the consent and approbation of the freemen of the colony; to appoint judges, erect forts, make war, &c.

The immortal Locke, distinguished as a political writer, as well as a metaphysican, was employed to frame a constitution or form of government for the infant colony. It is not probable that he was left at perfect liberty to follow the bent of his own genius and principles, in the instrument which was adopted, as his production, by the name of the Fundamental Constitutions; since we can find so little of that noble simplicity and wisdom, which might be expected in a work of that kind, from the hand of so great a master. The stamp of the proprietors is evident on the face of the instrument, in the aristocratical plan of the government, and the complexity and extravagance of its details. The genius of Shaftsbury, rather than that of Locke, is displayed in its composition.

The fundamental constitutions first adopted in 1670, consisted of eighty-one articles. Other fundamental constitutions, contained in one hundred and twenty articles, were afterwards substituted in 1682: but it does not appear that the freemen of the colony ever formally assented to these instruments.

These constitutions contemplate the creation of a palatine for life, and a body of hereditary provincial nobility, with estates to descend with dignities; a governor, to be chosen by the proprietors out of thirteen persons to be nominated by the colonists; a parliament or legislative body, to be composed of the governor and council, and representatives of the people, to sit in one chamber, but without power to originate bills, which were to originate in a grand council, to consist of the governor, the deputies of the proprietors, and the provincial nobility. The laws passed by the legislature were afterwards to be approved of by the people; and at the close of every century, were to expire, without the formality of an express limitation or repeal. The judicial branch of the government, was to consist of a palatine court, eight supreme courts, and seven inferior judicatories.

Meanwile, until the government could be organized conformably to the fundamental constitutions first adopted, a code of temporary laws was framed by the proprietors for the government of the colony, in the form of instructions to the governor and council. Amongst these laws was a set of agrarian rules, the preamble to which breathes a purer equity, and sounder policy, than is commonly found in the institutions of a newly formed community, and upon the principles it declares, lands were first parcelled out in the province to those who desired to acquire property therein.

The words of the preamble are as follows: "Since the whole foundation of government is settled upon a right and equal distribution of land; and the orderly taking of it up is of great moment to the welfare of this province: and although the regulation of this need not be perpetual, yet since all the concernment thereof will not cease as soon as the Government comes to be administered according to the forms established in the fundamental constitutions; that the whole distribution and allotment of land, may be with all fairness and equality, and that the inconveniency of all degrees may be, as much as possible, in their due proportion provided for, We the lords proprietors," &c.

The mode afterwards pursued to obtain titles to land, was by purchase from the proprietors, or their agents, at the rate of twenty pounds for every thousand acres. Warrants of survey issued to the purchasers,

who chose such vacant or unappropriated lands as suited them, and located their warrants by actual surveys; after which grants issued to them for the lands so surveyed, with copies of the surveys annexed. The governor and council met once every month for the purpose of issuing grants. The grants were signed and registered, and delivered to the grantees at one shilling quit rent for every hundred acres, to be paid to the proprietors annually. Some land was granted on condition of the payment of one shilling annual rent per acre. But this condition was soon altered by the legislature. Great discontents prevailed with respect to the terms on which lands were granted, and particularly with respect to the payment of quit rents and the fees of civil officers. These discontents increased to such a degree, that the people of the north eastern part of the province denounced the proprietary government, and discord and distraction reigned without controul.

The practical operation of civil government commenced in the year 1672, soon after the promulgation of the temporary laws. The province was divided into four counties. Twenty representatives from Berkely and Colleton counties, met in the legislative assembly. Juries, that admirable criterion of truth, and most important guardian of both public and private liberty, were formed according to the mode directed by the fundamental constitutions; a mode corresponding in principle to that which has ever since been preserved. Little, however, was effected, towards the establishment of civil rule, and the controul of equal laws, for many years. Certain *standing laws*, were enacted in 1687; but they were rejected by the proprietors, who insisted on the fundamental constitutions. The people on their part, disliked and disregarded the constitutions. Hence arose mutual disgust and contention.

At length, in 1693, the fundamental constitutions were laid aside, and civil discord for a short time subsided.

These constitutions were repealed by the proprietors, after the accession of William and Mary, and a new plan of government was provided in 1698, but it did not meet the approbation of the people, by whom it was never acknowledged.

In 1702, in order to pay the expenses occasioned by an unfortunate military enterprize against St. Augustine, the legislature authorized the issue of stamped bills of credit, to be sunk in three years by a duty on liquors, skins and furs. This was the first paper money that appeared in the province, and was the origin of *current money*, mentioned in many of our acts of assembly, and of what was commonly called *old currency*, till the close of the revolution. It was denominated current money, to distinguish it from sterling money of England, very little of which was ever in circulation, the balance of trade being always in favour of the mother country.

The credit of this currency was at first equal to sterling, and so continued for about six years; but it afterwards depreciated. The necessities of the government continually requiring fresh supples of a medium of value for circulation, to defray the charges incurred by Indian and Spanish wars, and other exigencies of a feeble and harassed colony, succeeding emissions of bills of credit took place. The first emissions were for four and eight thousand pounds; but in 1712, a public bank was established, and the issue of bills amounted to forty-eight thousand pounds, which were called bank bills, and like our present bank money might be loaned out on security. This paper currency might be legally tendered in payment of debts, though the bills did not carry interest, and were payable at a future time. Expedients were devised for the purpose of

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reducing the quantity in circulation, which became at length excessive, notwithstanding the emissions were restrained by the royal instructions. These expedients were frustrated by new emissions. Thirty thousand pounds issued in 1716, and two hundred and ten thousand in 1736.

Yet under all these disadvantages, little or no depreciation took place, after the first five or six years from the date of the original emission, for the space of forty years and upwards. The depreciation, which had soon settled at seven for one, remained fixed at that point with little or no variation, till about the year 1750; and even after that period, it continued to be the nominal measure of exchange. The Spanish milled dollar, which passed current at four shillings and eight pence sterling, was equal to thirty-two shillings and eight pence current money. By this relative measure of value, the amount of fines and forfeitures imposed by various acts of assembly may be correctly estimated.

The last emission of paper currency was in the year 1770, for building court houses and goals, which was rendered necessary by the circuit court act of 1769. The issue was for seventy thousand pounds current money, or ten thousand pounds sterling.

The credit of paper currency was now much degraded; and an act of 1782, gave the final blow to it, by taking from it its quality as a legal tender in discharge of debts.

Proclamation money, which is also frequently mentioned in our acts of assembly, acquired that denomination from a proclamation of queen Anne, in the sixth year of her reign, (about the year 1708) the object of which was, to establish a common measure of value for the paper currencies of the colonies. The same species of coins, which were equally rated in all the colonies, and passed at the same value as sterling money, were variously rated, and of different values, in relation to the paper currencies of the several colonies. In some of them the silver dollar passed at eight shillings, in others, at seven shillings and six pence, and six shillings, according to the quantities of paper money thrown into circulation. The standard fixed by the proclamation was, one hundred and thirty three pounds, six shillings and eight pence paper currency, for one hundred pounds sterling. The nominal value of currency was established at one fourth below the value of sterling. The dollar passed at six shillings and three pence, although not quite equal to six shillings and two pence three farthings, proclamation money.

This regulation, though it was respected by the colonial legislatures, was little attended to by the people at large, and the confusion resulting from paper currencies of different values, continued to exist.

In 1700, the government undertook to establish the Episcopal form of religious worship; and persevered in the pursuit of that object, with obstinate zeal, till it was attained in 1706. An act against non-conformity was passed. These measures were extremely odious to a number of the colonists, dissenters and others, who conscientiously refused the communion of the English church. They complained and remonstrated, but all to no purpose. It was a strange but not an unprecedented circumstance, that a weak colony, anxious to encourage emigrants from abroad, of various Protestant sects, to strengthen itself against foreign enemies, should nevertheless, at such a crisis, insult and persecute their fellow citizens, and Protestant Christian brethren, on account of slight differences in their religious dogmas, and the external ceremonies of worship!

Political and party considerations probably had no inconsiderable influence on the occasion. A profound historian has remarked that "the religious spirit, when it mingles with faction, contains in it something

supernatural and unaccountable; and in its operations on society, effects correspond less with their known causes, than in any other circumstance of government."

An act of 1696, granted liberty of concience to *all Christians, except Papists.*

By the act of 1706, for the establishment of religious worship, according to the Church of England, and for erecting churches (for which £2000 was appropriated) the province was divided into ten parishes. From this act it appears, that the far greater part of the inhabitants of the parishes of St. Dennis, in Orange quarter, and St. James, on Santee, were emigrants from France, and did not understand the English tongue, wherefore provision was made for using a French translation of the book of common prayer. This act prohibits the celebration of marriage, contrary to the table of marriages, or by a layman.

The admission of French emigrants to equal privileges with the English, gave great offence, and was the cause of bitter revilings and contests. The English considered them as aliens, and entertained towards them the usual ungenerous prejudices and antipathies of Englishmen. At one time they were excluded from the legislature, but this illiberal spirit at length abated.

In 1708, emigrants from Germany were furnished with land, one hundred acres per head, free of quit rent for ten years.

An act passed in 1715, to apportion the representation in the general assembly, amongst the several parishes; but it was soon afterwards repealed. This encreased the prevailing discontent and hostility towards the proprietary government. The fundamental constitutions had been regarded as inconsistent with the rights and privileges of the people. The council of twelve was now complained of as an innovation. Violent disputes ensued. The governor being the only legal ordinary, under the church establishment, the clergy refused to marry without his licence, which the people did not incline to apply for. Hence it became necessary to form the matrimonial contract, without the approbation of the governor or clergy.

In this situation stood the affairs of the colony in 1719, when an organized plan of resistance to the government was developed. The members of the legislative assembly, formed themselves into a convention, and entered into a number of resolutions, in consequence of which the chief justice (Trott) was displaced and another appointed in his room. Sundry other civil officers were appointed.

These revolutionary measures, which seem to have been countenanced by the British government, terminated in the complete subversion of the authority of the proprietors, in 1721, when they surrendered their charter to the king, pursuant to a previous agreement, which was afterwards confirmed by an act of parliament, 2 Geo. 2.——John lord Carteret only retained his rights of property to one eighth part, but surrendered his other rights.

When king George the first ascended the British throne, a design was formed to purchase the charter of the proprietors, against which the attorney general was instructed to proceed by *scire facias.* The civil commotions and revolutionary movements in the province hastened the desired event, and royal government succeeded to that of the proprietors. King George the first appointed a temporary government in 1721; and about the same time the province was divided into North and South Carolina.

Very few legislative acts passed prior to the year 1682. Chief justice

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Trott, after a diligent search, could find only nineteen, and those of no great importance. In 1692, an act passed concerning the trial of small and mean causes—In 1695, against stealing canoes—In 1696, to settle the form of conveyances, and grant liberty of conscience—In 1698, to encourage the importation of white servants—In 1700, to appoint courts of sessions and gaol delivery, twice a year—In 1706, to establish religious worship, and punish blasphemy—In 1707, to establish the bounds of parishes—In 1710, to establish weights and measures—In 1711, to settle a salary on the public receiver, and erect a new brick church in St. Philip's parish. These were the acts of chief importance to be remembered, which passed prior to the year 1712. In that year a number of very important acts were passed, viz: To put in force certain English statutes; to put in force the act of habeas corpus; an act of limitations; an attachment act; an act to establish free schools, &c. &c. In 1720, an act passed for the amendment of the law; and in 1721, acts were passed for choosing members of the commons house of assembly, for appointing a public treasurer, a comptroller and other public officers; and also, for establishing county and precinct courts.

SECOND PERIOD.

The government was fashioned after the model of that of England. Prior to 1730, the legislative authority was vested in three branches: A governor, who was in place of the king; a council, which occupied the station of a house of lords; and a representative assembly, answering to the British house of commons. All authority was derived from the crown.

In 1725, county and precinct courts had been appointed; but afterwards various changes took place in the judicative department. A court of king's bench and common pleas, were established; also a court of chancery and a court of vice admiralty. The court of chancery was composed of the governor and council, and a register and master of the court was appointed. The officers of the vice admiralty court were appointed by the lords of the admiralty in England. A chief justice appointed by the king, presided in the courts of king's bench and common pleas, to whom was associated certain assistant justices, appointed by the provincial legislature, which was styled the general assembly. The other officers of these courts were an attorney general, a provost marshal (or sheriff) and clerks. There was a secretary of the province, a surveyor general, and other civil officers, who were appointed by the crown. The clergy were elected by the freeholders of the parish. Justices of peace and militia officers were appointed by the governor and council. The law respecting the formation of juries was revised and established.

In 1739, the representative assembly consisted of forty-four members, who were eligible every three years, by the freeholders of sixteen parishes. Several townships were marked out, containing 20,000 acres each, intended for so many distinct parishes: But Williamsburgh township was for the most part, settled by Presbyterians from Ireland. At the revolution the church establishment fell with the royal government, to which it was an adjunct, and all christians became entitled to equal privileges.

The imposts to defray the charges of government amounted in 1725, to 222,260l, 18s, 10d. In 1734, to 41,511l, 9s, 10d—and in 1750, to 150,000l, sterling.

In 1748, the rate of interest was changed from ten to eight per cent. In 1777, it was again changed from eight to seven per cent, which is the present established rate of interest.

The general court held in Charlestown, having swallowed up the county and precinct courts, and being the only court of criminal and civil jurisdiction in the province (except the courts of justices of peace, which had jurisdiction in all civil causes as high as twenty pounds current money) great oppression and inconvenience was felt by the people living remote from the seat of justice; by parties, witnesses and jurors, who were obliged to attend the court, and especially by suitors and prosecutors, who were often worn out by "the law's delay," insulted by "the insolence of office," and ruined by costs and expenses most unreasonably incurred, and cruelly exacted. The facility thus afforded to thieves and dishonest debtors, to escape from the punishment due for crimes committed, and the payment of just debts, drove the people of the middle, and part of the upper country, then the frontier settlements, into the most disorderly and violent measures. The laws which were found ineffectual to restrain and punish horse thieves, and other notorious offenders, were also disregarded by good and honest men, who undertook to do themselves justice, and to punish the guilty by arbitrary authority. The authority of the civil magistrate was held in contempt, as insufficient for the maintenance of order, and the regular execution of the laws. Some efforts were made to repress these disorders, but they were found unavailing. The *regulators*, as they were called, consisted of respectable planters, and others, who demanded a better system, for the more regular, equal and vigorous, as well as prompt administration of justice. On the other hand, the instruments employed by the government to subdue this spirit of rebellion, and enforce the existing system, were men of little or no character or respectability; the obsequious tools of men in power, who abused their authority, and battened on the general distress. At length, in 1769, a remedy was reluctantly applied, and anarchy and unlawful violence yeilded to the majesty of the law. An act passed for laying off several districts, or circuits, and authorizing the holding of courts of general sessions and common pleas therein, twice a year, for the trial of causes criminal and civil arising within the same, respectively, "as nearly as may be, as the justices of assize and nisi prius do in Great Britain." Circuit courts were by this act to be held at Orangeburgh, Ninety-Six, (now Cambridge,) the Cheraws, Georgetown, Beaufort, and Charlestown—to sit six days, each. But the courts to be held in Charlestown, were not, strictly speaking, circuit courts. Those courts were regarded as are the courts of Westminster Hall, in England. All writs and other civil process issued from, and were returnable to the court of common pleas in Charlestown; and the practice was similar to that which relates to the courts of assize and nisi prius.

By this act the judges were authorized to determine without a jury in a summary way, on petition, all causes cognizable in the circuit courts, for any sum not exceeding twenty pounds sterling; except where the titles of land should be in question. But each party might claim and have the benefit of a jury trial. The office of provost marshal was abolished, and sheriffs and clerks were appointed.

Many objections were raised to planting the remote colonies of North America; and some sagacious politicians, who saw far into futurity, foretold, that after draining the mother country of inhabitants, they would soon shake off the yoke, and erect an independent government. This accordingly happened.

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After struggling some time against the current of the revolution, the authority of the royal government gradually sunk, and finally perished in 1775, when a temporary constitution or form of government was adopted.

The acts of assembly most worthy of being recorded, which were passed during this period, were as follows:

In 1731, a quit rent law, a jury law, and an act allowing of a solemn declaration in room of an oath.

In 1733, to lay off counties; respecting the surveying of lands.

In 1737, against selling offices—and regulating the courts.

In 1739, to authorize the building of a market in St. Philip's parish.

In 1740, for the government of slaves.

In 1744, an attachment act—and regulating white servants.

In 1746, a patrol law—and to empower the governor and a majority of the council to hold a court of chancery.

In 1747, to authorize the arming of slaves.

In 1748, to reduce the rate of interest from ten to eight per cent.

In 1767, to build an exchange, a custom-house and watch house.

In 1768, to build a work house, and poor house.

In 1769, to establish courts, build gaols, &c.

THIRD PERIOD.

Amidst the tumult of civil strife, the laws were silent, and their place was not always supplied by those of humanity. A form of government was instituted in 1776, pursuant to which an executive magistrate was elected, who was invested with extraordinary powers, under the name of president. This, however, soon gave place to the constitution which was established in 1778, conformably to the Declaration of Independence, and the executive officer was named governor. This constitution survived the revolution, and part of it is still in force, being referred to and unchanged by the constitution of 1790.

Certificates issued in 1774, to satisfy the demands of public creditors. These passed as paper money, at par. The revolution gave birth to other paper currencies, which soon occasioned a depreciation. The current money, now called *old currency*, was still in pretty good credit in the beginning of the year 1777, although about three millions of pounds were then in circulation. About one million was the amount in circulation in 1764. A flood of continental paper currency, in addition to other paper money, vastly encreased the tide in circulation, and the country was inundated. The depreciation was rapid, and ruinous.

In 1780, the British government being partially re-established in Charlestown, and other places in the lower country, a kind of military government was exercised. In Charlestown a board of police was instituted, and civil authority revived. Commissioners were appointed by the board of police to take into consideration the nominal and real value of the paper money which had been the medium of traffic, and settle a scale of depreciation, by which contracts might be governed according to equity and good conscience.

These commissioners reported ably, and in detail, and the proposed scheme was partially carried into effect. After the revolution the state legislature, in 1783, proceeded on similar principles, and a scale of depreciation was fixed by an act of assembly.

The British government was totally extinguished by the evacuation of Charlestown in 1782, and the capture of lord Cornwallis in Virginia. The legislative authority was exercised at Jacksonsborough in 1782, and civil rule under the constitution of 1778, was completely restored.

The legislative acts of this period, worth mentioning, are as follows:

In 1775, an act to prevent counterfeiting notes issued as the representatives of specie.

In 1776, to prevent sedition, and punish insurgents.

In 1777, to reduce the rate of interest from eight to seven per cent.

In 1778, to regulate the rates of wharfage and storage.

In 1782, to repeal the laws which make paper currency, or bills of credit, a legal tender in payment of debts; and dispose of certain estates, and banish certain persons, who had joined the British during the war.

FOURTH PERIOD.

Upon the restoration of peace and civil order, the attention of the government was directed to the police and jurisprudence of the country. Several acts of assembly were revived and amended. British sterling was now the only standard of value; but the English guinea passed at twenty-one shillings and nine pence, and the Spanish dollar at four shillings and eight pence. An act was passed to ascertain the weight and value of the gold and silver coin in circulation. The scale of depreciation was fixed in regard to paper currency. The mode and conditions of surveying and granting the vacant lands, was settled; and a court of chancery was established. Charlestown was incorporated by the name of Charleston.

As the population of the country extended, the circuit court system established in 1769, was found inadequate to the due and equal administration of justice. To remedy this evil, it was proposed to establish courts of inferior jurisdiction, after the model of the county court system of Virginia and North Carolina.

Mr. Justice Pendleton, one of the associate judges, and an active member of the house of representatives (for these offices were not then incompatible) was the able advocate of this scheme. By his influence and strenuous exertions, it was adopted in 1785. An act passed to lay off the state into counties, and establish county courts. The public buildings for the accommodation of these courts, were to be erected at the expense of the respective counties, and a tax was to be laid for that purpose by the county courts. The courts were to be held once in every three months by the justices of peace of the several counties respectively; and their jurisdiction extended to the hearing and determination of all causes at common law, to any amount where the debt was liquidated by bond or note of hand, or where the damages in certain actions did not exceed fifty pounds, and in other personal actions where the damages did not exceed twenty pounds, or where the titles of land did not come in question. In criminal cases their jurisdiction was extremely limited. The modes of proceeding were prescribed—the forms of process—and the manner of trial. The right of appeal to the superior, or circuit courts, was provided.

This system was afterwards, at different times, altered and amended. In 1791 it was new modelled. Three judges or justices of the

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county courts, were chosen for each county, by joint ballot of the two houses of the legislature, to hold the respective courts, which were held semi-annually for the trial of causes; but they were allowed no compensation for their services. Two intermediate courts were holden annually, for the transaction of business relating to roads, taverns, and the poor.

Although the administration of justice in these courts was irregular, and in many instances unequal, owing chiefly to the want of legal information in those who were appointed to preside therein, yet they were a great convenience to the community, considering the defects of the circuit court system of that day; and much good, as well as some evil, resulted from their establishment. It was an important step towards the attainment of that improved system which at present exists.

The county court establishments never extended to the districts of Charleston, Georgetown and Beaufort. The Inhabitants of those districts were opposed to it; and it was provided, that no county courts should be held in those districts till a majority of the taxable inhabitants should petition for them.

At the close of the war, many were deeply involved in debt; and the accumulation of interest during the revolution aggravated the distress into which they were plunged. A great many others, on the establishment of peace and independence, misled by their sanguine hopes, or regardless of consequences, improvidently contracted debts, which they were unable to pay when they became due. The legislature was repeatedly importuned to interpose between debtor and creditor, for the purpose of giving relief to the former, without doing injustice to the latter. This could not easily be done. Various expedients were resorted to, the tendency of which was finally to utterly ruin the debtor, and in most instances, greatly injure the creditor. Debtors, however, obtained temporary relief, which served to still their clamours, and alleviate their present distress.

Amongst other means employed for the relief of debtors, and to supply the scarcity of cash, (which always accompanies the balance of trade, now greatly against the country) an act was passed in 1785, to establish a medium of circulation by way of loan. The bills which issued pursuant to this act, passed as money, under the denomination of paper medium. Some temporary advantages resulted from this measure; but it was the ruin of many, and the public ultimately suffered by it.

In the same year an act passed to effect a revisal, digest and publication of the laws of the state. The preamble to this act states, that "from the long neglect of compiling into one body the acts of the legislature of this state, and presenting the same for the information of the people, the laws have not only multiplied to a great and unnecessary degree, but have also run into obscurity and confusion; and it being necessary to revise and digest the laws enacted under the authority of the British crown and continued of force, together with those passed since the abolition of that authority; and by corresponding additions, alterations and amendments adapted to the spirit and principles of a republican government, remove the present well grounded complaints of the people for want of such revisal, digest and publication,"—therefore the act was provided. It provides for the appointment of three commissioners, and empowers and directs them to form "a complete and accurate digest of the state laws, with such additions, alterations and amendments" as they should see fit; and to require the production of such records and other public documents, &c. as should be necessary. They were directed to make the

establishment of county courts a part of their system; and they were allowed two years for the accomplishment of their task.

The commissioners chosen were, Mr. Justice Pendleton, Mr. Justice Burke, and Mr. Justice Grimke.

In 1789, the commissioners were called on by the legislature for a report on the subject of their appointment; in consequence of which a copy of their digest was laid before the House of representatives.

Mr. Justice Pendleton had died a short time before the meeting of the legislature. Mr. Justice Burke, in a letter addressed to the president of the senate, in consequence of a resolution of that body calling for the digest, goes at large into an explanation of the nature of the work, its plan and execution.

This letter was ordered to be published; and amongst other pertinent and forcible observations which it contains, are the following: "thus the laws of this country, on which depend the lives and property of the people, now lie concealed from their eyes, mingled in confused chaos, under a stupendous pile of old and new law rubbish, past all possibility of being known, only to the law professors. I will venture to aver, that there are but very few of our lawyers, that have all our laws, or can point out which of them are in force, or otherwise. The ablest of them could not in all cases, have separated the grain from the immense heap of chaff, without much time and labour in searching for it."

If the complaint of this distinguished magistrate and eminent politician, was well founded, how much more reason have we at this day (1814,) to complain, when the same evils are multiplied, and become more invetorate, by the accumulation of new laws, and the lapse of time?

The digest prepared by the commissioners was not adopted; but many of the laws contained therein, were afterwards passed as separate acts of assembly, viz: The act constituting the circuit courts, courts of record, and giving them original and final jurisdiction; the act for the distribution of intestates's estates, and the abolition of the rights of primogeniture, and the act concerning escheats.

Another part of the digest provided for a uniformity of decision and practice, by the institution of a court of errors and motions, to be held at the seat of government, at the conclusion of the circuits. This improvement was engrafted in the constitution of 1790.

Other innovations and amendments contemplated by the commissioners were not approved. They recommended the vesting of the equity jurisdiction in the circuit courts, and abolishing the court of chancery. They provided a new system for the punishment of crimes, in which banishment was a prominent feature; and they presented a reform of the law concerning juries.

In 1786, an act passed for removing the seat of government from Charleston to a town to be built on the Congaree river, to be called Columbia, and provision was made for the purchase of suitable lands for that purpose. The seat of government was accordingly not long afterwards established at Columbia, and the public records were removed to that place.

In 1787 and 1788, acts passed for appointing escheators, and regulating escheats; for establishing the bounds of prisons, and for the suppression of vagrants: and in 1789, the circuit courts were constituted courts of complete, original and final jurisdiction. In the same year an act passed, directing the manner of granting probates of wills and letters of administration.

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The delegates of the people met in general convention at Columbia, in June 1790, established a constitution for the government of the state, conformably to the principles of the constitution of the United States. In this instrument the struggle for power, and equal rights, between the lower and upper country is manifest, and a spirit of compromise and mutual concession may be discerned.

The removal of the seat of government to Columbia, had been firmly opposed by a great majority of the people of the lower country, who always reluctantly yielded to an equal participation of power and privileges, with those of the upper and middle country, many of whom were emigrants from other states, and whose manners and habits did not assimilate to those of the parishes in the lower country.

The public offices were divided by the convention between the metropolis and the seat of government, for the greater accommodation of the inhabitants of the sea coast, and the adjacent parishes. Two treasurers were provided; one to keep his office at Columbia, and the other in Charleston. The offices of Secretary of State, and surveyor general, were to be kept at both these places; the principals to reside at the one place, and their deputies at the other. The meetings of the judges at the conclusion of the circuits, for hearing and deciding cases and points of law, by way of appeal, were also established at Charleston, as well as at the seat of government.

Thus a sort of duplicate government was instituted, and the ancient predominancy of the lower country in a great measure preserved. And the apportionment of the representation in the legislature, was well calculated to maintain that predominancy. It was extremely unequal; the lower country having a much greater representation, upon any principle of fair and equal government, than the upper and middle country.

This disproportion encreased every year, by the progress of population, and became so glaring as to excite considerable discontent and animosities. An association was formed, not long after the establishment of the constitution, the object of which was to bring about a reform in the representative system. Robert Goodloe Harper, esquire, who was at the head of this association, and had published a pamphlet on the subject, afterwards, as a member of the House of Representatives, brought the matter before the legislature. It was warmly opposed by the members from the lower country generally, and was rejected by a large majority.

In process of time, however, as the upper and middle country encreased in population, and improved in education and knowledge, while the lower country remained stationary in these respects, a more yielding and liberal spirit was manifested; and the more sagacious and calculating part of the community of the lower country, being convinced of the propriety and necessity of a reform, became reconciled to the measure; and a new arrangement of the representation in the legislature was established in 1809, as it now stands in the constitution. A feeble opposition was made to it on general principles; but the mode of reform was the subject of considerable debate.

It was declared to be the opinion of the convention, that the legislature should make effectual provision for revising, digesting and publishing the laws of the state, so as that a general knowledge thereof might be diffused among the citizens. This object, about which the convention, and different legislative assemblies, prior to 1790, appear to have been very anxious, seems to have excited no interest, nor attracted the attention of any subsequent legislature: and indeed the community in general

seems to have considered it with indifference, or passed it over unnoticed, as a matter of no importance.

In the year 1791, the legislature proceeded to alter and amend the laws relating to the judicial department of the government. The courts of equity were directed to be held at three different places in the state; and witnesses were to be examined in open court. The mode of obtaining injunctions was declared, and other regulations established.

The circuit courts were invested with complete, original and final jurisdiction; new districts were erected; and the powers and duties of the judges more particularly declared. The county courts were new modelled: the rights of primogeniture were abolished, and also the fictitious proceedings in the action of ejectment: a more equal distribution of the estates of persons dying intestate was prescribed, and the action of trespass to try the titles to land, combining the action for mesne profits, substituted in lieu of the action of ejectment. Salaries and fees were established, and commissioners appointed to adjust and settle accounts of the treasury department.

In 1794, acts were passed to organize the militia in conformity with the act of Congress, for establishing a uniform militia throughout the United States.

Many other laws were made of considerable importance, (but too tedious to enumerate,) in 1794, and the succeeding years, down to 1798. At this time the administration of justice was extremely tedious and defective. The jurisdiction of the county courts was very limited; and in many of them, justice was dispensed in a very loose and imperfect manner. The accumuletion of busines in the circuit courts had greatly increased; and the manner of despatching it, was not always the best that might be practised to answer the purposes of public justice, and give satisfaction to the people.

In order to establish a uniform and more convenient system of judicature, a bill was brought forward in the legislature, for instituting district courts, in the several counties of the state, and in small sections of that part of the state wherein county courts were not established, and to arrange those courts into several circuits or ridings.

The most zealous and able advocates of this project, were William Falconer, Esq. a member of the House of Representatives from Chesterfield, and William Marshall, Esq. late one of the judges of the courts of equity, a member of the Senate. It was carried, and passed into a law.

This law was afterwards revised and amended in 1799, and county courts, which had been retained in the former act, with very limited powers, were now forever abolished. A supplementary act was passed the same year, providing for every case that might occur under the various changes which were directed to take place in the judiciary system. The appointment of additional judges and circuit solicitors were provided for; courts of ordinary were established in each district; and many other important regulations adopted.

An act passed the same year to establish the office of comptroller of the treasury.

In 1801, an act was passed to establish a college at Columbia; and the sum of fifty thousand dollars was appropriated for erecting suitable buildings; also, the annual sum of six thouiand dollars, for the purpose of paying the salaries of the officers of the college, and other purposes. In addition to this, an extensive parcel of land, in an elevated situation, was bestowed by the legislature, for the site of the college edifices.

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In the same year, a court of inferior jurisdiction was established in the city of Charleston. The court of wardens had been abolished a few years before.

By an act of 1805, original grants of land were declared to be valid, though wanting the great seal of the state; and the little seal was directed to be thereafter affixed to grants.

In 1808, the state was divided into equity districts and circuits: and the courts of equity were directed to be held by one judge in the respective districts. And a court of appeals for the court of equity was established, to be holden twice a year, at both Columbia and Charleston.

In 1809, an act passed ratifying former acts amending the constitution, and reforming the arrangement of the representation in the legislature, which acts had passed in 1808. Sheriffs were directed to be elected by the people of each district, and the judges of the law courts were vested with power to appoint guardians to minors, and in cases of ideocy and lunacy.

An act of 1811, requires the judges respectively to give their reasons in writing, in all cases submitted to them in the constitutional court of appeals. And the judges of the courts of equity are enjoined to observe a similar rule in cases of appeal decided by them.

In 1812, an act passed against duelling; and another establishing the bank of the state.

In 1813, the dispute with the state of North Carolina, concerning boundary, was finally settled, and an act was passed on the subject, confirming the treaty made by the commissioners appointed by the two states to adjust the dispute.

To conclude this imperfect and rude sketch of our legal history, the author hopes he may be permitted, in extenuation of his failures, in the compilation of the Digest, as well as in this attempt to trace the civil jurisprudence of the state from its origin, to say, in the language of Dr. Johnson, that "to have attempted much is always laudable, even when the enterprize is above the strength that undertakes it:" and he presumes, however extravagant it may appear, to prefer a wish, that our laws may hereafter be revised, corrected and improved, in such a manner that they may attain that perfection, which the virtuous Sydney (the innocent victim of a vile court and profligate king) predicates of law in general—"Established for the good of the people, which no passion can disturb:—void of desire and fear, lust and anger:—*mens sine affectu*, mind without passion, written reason, retaining some measure of the divine perfection:—not enjoining that which pleases a weak frail man, but, without any regard to persons, commanding that which is good, and punishing evil in all, whether rich or poor, high or low:—deaf, inexorable, inflexible."

"Of law" (says the excellent Hooker, in his book of ecclesiastical polity) "no less can be acknowledged, than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage; the least as feeling her care, and the greatest as not exempted from her power."

JOSEPH BREVARD.

September, 1814.

A LIST OF JUDGES AND ATTORNEY GENERALS.

JUDGES.

EDMUND BOHUN, chief justice; appointed in 1696; died the same year.
NICHOLAS TROTT, about the years 1712—1718. He was also judge of the provincial court of vice admiralty in 1715.
RICHARD ALLIEN, chief justice; chosen by the legislature in place of Nicholas Trott, who was superseded.
ROBERT WRIGHT, chief justice; appointed in 1730; died in 1739.
THOMAS DALE, assistant judge of the courts of general sessions and common pleas; appointed March 5th, 1736.
ROBERT AUSTIN, ditto appointed April 8th, 1737.
BENJAMIN DE LA CONSEILLERE, ditto appointed same time.
THOMAS LAMBALL, ditto appointed April 20th, 1737.
THOMAS DALE, chief justice; appointed in 1739, Oct. 17th; superseded in November.
BENJAMIN WHITAKER, chief justice; appointed Nov. 7th, 1739; removed in 1749, being paralytic.
ISAAC MAZYCK, assistant judge; appointed February 5th, 1740.
WILLIAM BULL, Jr. ditto " same time.
ROBERT YONGE, ditto " February 12th, 1740.
OTHNIEL BEALE, ditto " July 3d, 1741.
JOHN LINING, ditto " August 15th, 1744.
JAMES GRÆME, chief justice; appointed June 6th, 1749; died in 1752.
CHARLES PINCKNEY, ditto " September 22d, 1752.
PETER LEIGH, ditto " October 27th, 1753; died in 1759.
JOHN DRAYTON, assistant judge; " October 9th, 1753.
JAMES MICHIE, chief justice; " September 1st, 1759; died in 1760.
WILLIAM SIMPSON, assistant judge; appointed February 27th, 1760.
ROBERT PRINGLE, ditto " March 3d, 1760.
WILLIAM SIMPSON, chief justice; " January 24th, 1761.
CHARLES SKINNER, ditto " January 9th, 1762.
ROBERT PRINGLE, assistant Judge " March 23d, 1762.
WILLIAM BURROWS, ditto " November 21st, 1764.
ROBERT BRISBANE, ditto " November 1st, 1764.
RAWLINS LOWNDES, ditto " February 7th, 1766.
BENJAMIN SMITH, ditto " February 28th, 1766.
DANIEL D'OYLEY, ditto " March 1st, 1766
GEORGE GABRIEL POWELL, ditto " August 10th, 1769; superseded in 1772.
THOMAS KNOX GORDON, chief justice; appointed May 13th, 1771.
EDWARD SAVAGE, assistant judge; appointed May 30th, 1771.
JOHN MURRAY ditto " November 18th, 1771.
JOHN FEWTRELL, ditto " November 19th, 1771.
MATTHEW COSLETT, ditto " April 23d, 1772.
WM. HENRY DRAYTON, ditto " January 25th, 1774.
WILLIAM GREGORY, ditto " November 4th, 1774.
WM. HENRY DRAYTON, chief justice; appointed April 12th, 1776.
JOHN MATTHEWS, assistant judge; appointed April 17th, 1776.
THOMAS BEE, ditto " April 15th "
HENRY PENDLETON, ditto " April 17th, " died in 1788.
ÆDANUS BURKE, ditto " April 1st, 1778.
THOMAS HEYWARD, ditto " February 25th, 1779; resigned in 1789.
JOHN FAUCHEREAUD GRIMKE, assistant judge; appointed March 20th, 1779; resigned in 1783.
THOMAS WATIES, assistant judge; appointed February 2d, 1779; resigned in 1789.
WILLIAM DRAYTON, ditto " March 17th, " " 1789.
JOHN RUTLEDGE, chief justice; elected and commissioned February 16th, 1791; resigned in 1795.
ELIHU HALL BAY, associate judge; ditto February 19th, 1791.
WILLIAM JOHNSON, Jr. judge of the courts of general sessions and common pleas; elected and commissioned February 10th, 1800; resigned May, 1804.
EPHRAIM RAMSAY, elected and commissioned December 19th, 1799.
LEWIS TREZEVANT, ditto February 10th, 1800; died Feb. 15th, 1809.

LIST OF JUDGES.

JOSEPH BREVARD, judge of the courts of general sessions and common pleas; elected and commissioned, December 17th, 1801.
THOMAS LEE, elected and commissioned May, 1804.
SAMUEL WILDS, Jr. ditto December 11th, 1804; died February, 1810.
WILLIAM SMITH, ditto June 28th, 1808.
ABRAHAM NOTT, ditto December 5th, 1810.
CHARLES JONES COLCOCK, ditto December 9th, 1811.
RICHARD GANTT, appointed December 14th, 1815.
DAVID JOHNSON, ditto ditto
LANGDON CHEVES, ditto ditto Dec. 17th, 1816. Judge Smith having resigned.
JOHN S. RICHARDSON, ditto December 18th, 1818.
DANIEL ELLIOTT HUGER, ditto December 11th, 1819; resigned September, 1830.
WILLIAM DOBEIN JAMES, ditto Dec. 18th, 1824. Elected from Court of Equity.
THEODORE GAILLIARD, ditto ditto. ditto.
THOMAS WATIES, ditto ditto ditto.
JOHN B. O'NEALL, ditto December 20th, 1828.
JOSIAH J. EVANS, ditto December 12th, 1829.
WM. D. MARTIN, ditto December 2d, 1830; died November, 1833.
BAYLES J. EARLE, ditto ditto
A. PICKENS BUTLER, ditto December 5th, 1833.

JUDGES OF THE COURT OF EQUITY.

JOHN RUTLEDGE, (commissioned 1784)
RICHARD HUDSON,
JOHN MATTHEWS,
HUGH RUTLEDGE,
JAMES GREEN HUNT,
ÆDANUS BURKE, (com. 1800,)
WILLIAM MARSHALL, (com. 1800)
WILLIAM JAMES,
WADDY THOMPSON, (com. 1805,)
HENRY WM. DESAUSSURE, (1808,)
THEODORE GAILLARD, (1808,)
THOMAS WATIES, (1811,)
HENRY W. DESAUSSURE, Dec. 18th, 1824.
WADDY THOMPSON, ditto; resigned, Dec. 16, 1828,
WILLIAM HARPER, December 20th, 1828,
JOB JOHNSTON, Dec. 4, 1830,
WILLIAM HARPER, December, 1835,
DAVID JOHNSON, December, 1835.

LIST OF JUDGES OF THE COURT OF APPEALS.

CHARLES J. COLCOCK, appointed December 18th, 1824.
ABRAHAM NOTT, ditto ditto died June, 1830,
DAVID JOHNSON, ditto ditto
WILLIAM HARPER, ditto December 1st, 1830.
JOHN B. O'NEALL, ditto ditto
The Appeal Court of 3 Judges was established in 1824—the Appeal Court of 10 Circuit Judges in 1835.

ATTORNEY GENERALS.

DAVID GRÆME, appointed January 11th, 1762.
JAMES MOULTRIE, appointed pro tem. January 30th, 1764; resigned in September.
JOHN RUTLEDGE, appointed September 17th, 1764, pro tem.
EGERTON LEIGH, appointed June 5th, 1765, in room of D. Græme.
ALEXANDER MOULTRIE, appointed April 13th, 1776.
JOHN JULIUS PRINGLE, appointed December 20th, 1792.
LANGDON CHEVES, appointed December 17th, 1808.
JOHN S. RICHARDSON, appointed December 6th, 1810.
JOHN S. RICHARDSON, appointed Nov. 30th, 1816.
ROBERT Y. HAYNE, appointed Dec. 18th, 1818.
JAMES L. PETTIGRU, appointed Dec. 7th, 1822.
Ditto appointed Nov. 29th, 1826.
HUGH S. LEGARE, appointed Nov. 27th, 1830.
R. BARNWELL SMITH, appointed Nov. 29th, 1832.

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That South Carolina be earnestly requested and respectfully entreated to rescind or suspend her Ordinance of Nullification.
That Congress be and are earnestly and respectfully requested and entreated to modify the Acts laying duties on imports, so as to effect a gradual reduction to the standard of necessary revenue.
That Virginia expects, and the other States have a right to expect, that nothing will be done on either side which may endangor the existence of the Union.
That Virginia continues to regard the doctrines of State Rights and State Sovereignty, as set forth in the resolutions of 1798 and 1799, as a true interpretation of the Constitution of the United States; but not as countenancing the proceedings of South Carolina, or all the principles assumed by the President in his Proclamation.
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It is the government of a majority, with reference only to the interests and power of that majority. The protective system is a small part only of the unjust proceedings of that majority.....398

Unless some constitutional check can be interposed to stop these oppressions, we shall be liable to others still more revolting,.....398

The present is an attempt to raise a party within the State devoted to Federal interests, exempted from State controul, and subjected only to the Courts of the United States. It is an attempt which if not resisted, will reduce the southern States to the last degree of provincial slavery.....399

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N. B.—The original spelling has been preserved.

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